COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

DIFFÉREND TERRITORIAL

(JAMAHIRIYA ARABE LIBYENNE/TCHAD)

VOLUME I

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

TERRITORIAL DISPUTE

(LIBYAN ARAB JAMAHIRIYA/CHAD)

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La présente affaire, inscrite au rôle général de la Cour sous le numéro 83 le 3 septembre 1990, a fait l'objet d'un arrêt rendu le 3 février 1994 (*Différend territorial (Jamahiriya arabe libyenne/Tchad), arrêt, C.I.J. Recueil 1994*, p. 6).

Les documents relatifs à cette affaire sont publiés dans l'ordre suivant :

Volume I. Compromis ; mémoire de la Jamahiriya arabe libyenne.
Volume II. Mémoire de la Jamahiriya arabe libyenne *(suite)*.
Volume III. Mémoire du Tchad.
Volume IV. Contre-mémoire de la Jamahiriya arabe libyenne.
Volume V. Contre-mémoire du Tchad.
Volume VI. Réplique de la Jamahiriya arabe libyenne ; réplique du Tchad.
Volume VII. Comptes rendus d'audience.

*

Aux fins de la présente édition, la Cour a décidé que les pièces de la procédure écrite seront reproduites *intégralement* ; cette édition comprendra donc aussi les documents annexés auxdites pièces — qui ne sont pas mis en ligne sur le site Internet de la Cour. La reproduction de l'ensemble des documents annexés dans cette édition permettra aux praticiens de mieux apprécier, dans toute sa portée, l'argumentation développée par les Parties dans leurs écritures. Comme à l'accoutumée, les comptes rendus des audiences publiques sont publiés à la suite des pièces de procédure écrite ; ces comptes rendus apparaissent ci-après dans leur version finale corrigée — qui complète ainsi utilement la version provisoire mise en ligne sur le site de la Cour.

La Cour souhaitant que lesdits documents paraissent aussi rapidement que possible, il a été décidé, chaque fois que les moyens techniques le permettraient, de reproduire les pièces de procédure en l'état où elles ont été présentées par les Parties ; cela a été fait en l'espèce, sauf quand la qualité technique de certains documents annexés était insuffisante aux fins de leur impression.

Ainsi, certaines pièces de la présente édition ont été scannées et, de ce fait, les titres courants du présent ouvrage comportent deux genres de folios : outre la pagination continue habituelle, on trouvera, entre crochets, la pagination d'origine des pièces scannées, à laquelle il faudra se reporter en cas de renvoi.

La Haye, 2013.

This case, entered on the Court's General List on 3 September 1990 under number 83, was the subject of a Judgment delivered on 3 February 1994 (*Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 6).
The documents relating to the case are being published in the following order:

Volume I. Special Agreement; Memorial of the Libyan Arab Jamahiriya.
Volume II. Memorial of the Libyan Arab Jamahiriya *(continuation)*.
Volume III. Memorial of Chad.
Volume IV. Counter-Memorial of the Libyan Arab Jamahiriya.
Volume V. Counter-Memorial of Chad.
Volume VI. Reply of the Libyan Arab Jamahiriya; Reply of Chad.
Volume VII. Verbatim Records of the Hearings.

*

For the purposes of this edition, the Court has decided that the written pleadings will be reproduced *in full*; it will therefore also include the documents annexed to those pleadings, which are not made available on the Court's website. The reproduction of all the annexed documents in this edition will enable practitioners to appreciate better the full scope of the arguments developed by the Parties in their written pleadings. As usual, the verbatim records of the public hearings appear after the pleadings; these verbatim records are published here in their final corrected versions, providing a useful supplement to the provisional versions made available on the Court's website.

Since the Court wishes to publish these documents as quickly as possible, it has been decided, where technically feasible, to reproduce the pleadings in the form in which they were submitted by the Parties; that has been done here, except when the technical quality of certain annexed documents was not sufficient for them to be published.

Some documents in this edition have thus been scanned, and there are consequently two types of page numbering for the items included in these volumes: in addition to the normal continuous pagination, the original page numbers of the scanned documents are provided in brackets for reference purposes.

The Hague, 2013.

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COMPROMIS

SPECIAL AGREEMENT

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

ACCORD-CADRE SUR LE RÈGLEMENT PACIFIQUE
DU DIFFÉREND TERRITORIAL ENTRE LA GRANDE JAMAHIRIYA
ARABE LIBYENNE POPULAIRE ET SOCIALISTE
ET LA RÉPUBLIQUE DU TCHAD

notifié à la Cour internationale de Justice
les 31 août 1990/3 septembre 1990

DIFFÉREND TERRITORIAL

(JAMAHIRIYA ARABE LIBYENNE/TCHAD)

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

FRAMEWORK AGREEMENT ON THE PEACEFUL SETTLEMENT
OF THE TERRITORIAL DISPUTE BETWEEN THE GREAT
SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA
AND THE REPUBLIC OF CHAD

notified to the International Court of Justice
on 31 August 1990/3 September 1990

TERRITORIAL DISPUTE

(LIBYAN ARAB JAMAHIRIYA/CHAD)

1. THE SECRETARY OF THE PEOPLE'S COMMITTEE OF FOREIGN LIAISON AND INTERNATIONAL CO-OPERATION OF THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

31 August 1990.

I have the honour to refer to Article 40 (1) of the Statute of the Court and to Article 2 *(a)* of the *Accord-cadre sur le règlement pacifique du différend territorial entre la Grande Jamahiriya arabe libyenne populaire et socialiste et la République du Tchad* of 31 August 1989 (the "Accord-Cadre"), a certified copy of which is attached to this letter. Pursuant to Article 7 of the Accord-Cadre, it was notified by Libya to the Secretary-General of the United Nations on 16 August 1990 for registration under Article 102 of the United Nations Charter and has been notified to the Organization of African Unity, as well.

The negotiations referred to in Article 1 of the Accord-Cadre have failed to resolve the territorial dispute between the Parties, Libya and Chad, and no decision by the respective Heads of State has been reached to vary the procedures established by the Accord.

Accordingly Libya is bound, following the expiry of the year referred to in Article 1, to implement its obligation under Article 2 *(a)* " ... à soumettre le différend au jugement de la Cour internationale de Justice".

For the purposes of the Rules of Court, the dispute ("différend") submitted to the Court is their territorial dispute ("leur différend territorial") referred to in the Accord-Cadre, and the question put to the Court may be defined in the following terms:

> "In further implementation of the Accord-Cadre, and taking into account the territorial dispute between the Parties, to decide upon the limits of their respective territories in accordance with the rules of international law applicable in the matter."

In further explanation of the territorial dispute to which the Accord-Cadre refers, Libya would observe that the territory in dispute has a long and complex history. The determination of the limits of the respective territories of the Parties in this region involves, *inter alia*, a consideration of a series of international agreements although, in the view of Libya, none of these agreements finally fixed the boundary between the Parties which, accordingly, remains to be established in accordance with the applicable principles of international law.

The United Nations, in granting independence to Libya, saw the question of Libya's boundaries in this region as yet to be resolved, in so far as the portion of Libya's boundary with what was then French territory, but not already delimited, was to be settled by negotiation. The years intervening after Libya's independence witnessed no negotiations directed to an agreed delimitation of this boundary, neither with France nor with Chad after its independence in 1960. The activities of the Organization of African Unity were primarily concerned with the internal situation in Chad. The Organization of African Unity did not seek to adjudicate on the merits of the territorial dispute between the Parties. It was concerned with the procedures which might best be used by the Parties to resolve their dispute, and the Accord-Cadre was promoted by Algeria within the Organization of African Unity; and the Accord-Cadre envisaged settlement of the territorial dispute by the Court, in the event that the Parties failed to agree. Accordingly, it is appropriate for the Court to undertake the task identified in the question outlined above, as the task which was properly envisaged by the Parties in the Accord-Cadre as appropriate to resolve the territorial dispute, fully and finally, in the light of the full record of the conduct of the Parties and of their predecessors-in-title.

Finally, whilst there are other obligations in the Accord-Cadre which do not form part of the territorial dispute now before the Court, Libya would wish to inform the Court of its willingness to fulfil those other obligations. First and foremost is the release and return of prisoners of war, which is also an obligation under international law that Libya has fulfilled, and calls upon Chad to do likewise as a matter of priority. The other obligations in the Accord-Cadre that Libya is willing to fulfil include the following:

(a) to enter in good faith into negotiations to agree with Chad, within the framework of the Mixed Commission referred to in Article 5 of the Accord-Cadre, and subject to the supervision of the *Ad Hoc* Committee of the OAU referred to in Article 6 of the Accord-Cadre, any necessary "mesures d'accompagnement" referred to in Article 2 *(b)* thereof;
(b) to accept that neither Party will establish any form of new presence in the area of dispute (Art. 2 *(b)*); and
(c) to comply fully with the obligations in Article 4.

Libya files this Notification on the basis that each Party will have the opportunity, in its Memorial, to develop its views, *inter alia*, on the nature and extent of the territorial dispute between them. Libya likewise assumes that, upon the filing of this Notification, the Court will, after consultation with the Agents of the Parties, fix the time-limits within which the Parties will file their respective Memorials.

In this regard, Libya has named Mr. Abdulati Ibrahim El-Obeidi as its Agent for this case.

(Signed) Jadallah Azzuz ETTALHI.

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2. ACCORD-CADRE SUR LE RÈGLEMENT PACIFIQUE DU DIFFÉREND TERRITORIAL ENTRE LA GRANDE JAMAHIRIYA ARABE LIBYENNE POPULAIRE ET SOCIALISTE ET LA RÉPUBLIQUE DU TCHAD

La Grande Jamahiriya arabe libyenne populaire et socialiste d'une part,
et la République du Tchad d'autre part,

se fondant, d'une part, sur les résolutions de l'Organisation de l'unité africaine (OUA), en particulier la résolution AHF/Rés. 6 (XXV) sur le différend territorial Libye-Tchad, et d'autre part, sur les principes fondamentaux de l'Organisation des Nations Unies (ONU), à savoir notamment :

— le règlement des différends internationaux par des moyens pacifiques ;
— l'égalité souveraine de tous les Etats ;
— le non-recours à la menace ou à l'emploi de la force dans les rapports entre les Etats ;
— le respect de la souveraineté nationale et de l'intégrité territoriale de chaque Etat ;
— la non-ingérence dans les affaires intérieures ;

déterminées à régler pacifiquement leur différend territorial,

DÉCIDENT DE CONCLURE LE PRÉSENT ACCORD :

Article premier. Les deux parties s'engagent à régler d'abord leur différend territorial par tous les moyens politiques, y compris la conciliation, dans un délai d'un an, cité comme référence, à moins que les chefs d'Etat en décident autrement.

Article 2. A défaut d'un règlement politique à leur différend territorial, les deux parties s'engagent :

a) à soumettre le différend au jugement de la Cour internationale de Justice ;
b) à prendre des mesures d'accompagnement au règlement juridictionnel, à savoir sur le retrait des forces des deux pays des positions qu'elles occupent actuellement en date du 25 août 1989 dans la région litigieuse sous la supervision d'une commission d'observateurs africains, et à s'interdire toute implantation nouvelle sous quelque forme que ce soit dans ladite région ;
c) à procéder audit retrait à des distances à convenir ;
d) à observer lesdites mesures d'accompagnement jusqu'à ce que la Cour internationale de Justice rende un arrêt définitif sur le litige territorial

Article 3. Tous les prisonniers de guerre seront libérés.

Article 4. La Grande Jamahiriya arabe libyenne populaire et socialiste et la République du Tchad réitèrent leurs décisions sur le cessez-le-feu instauré entre elles et s'engagent en outre à cesser toute forme d'hostilité, notamment à :

a) cesser toute campagne médiatique hostile ;

b) s'abstenir de s'immiscer directement ou indirectement, sous aucune forme, sous aucun prétexte et en aucune circonstance, dans les affaires intérieures et extérieures de leurs pays respectifs ;

c) s'interdire tout appui politique, matériel, financier et militaire à toutes les forces hostiles à l'un ou l'autre des deux pays ;

d) procéder à la signature d'un traité d'amitié, de bon voisinage et de coopération économique et financière entre les deux pays.

Article 5. Les deux parties décident de la mise sur pied d'une commission mixte qui sera chargée d'arrêter les dispositions en vue de l'application du présent accord et de veiller à prendre toute mesure nécessaire à cet effet.

Article 6. Le comité *ad hoc* de l'Organisation de l'unité africaine (OUA) sur le différend Libye-Tchad sera appelé à assurer le suivi de la mise en œuvre des dispositions du présent accord.

Article 7. La Grande Jamahiriya arabe libyenne populaire et socialiste et la République du Tchad s'engagent à notifier le présent accord à l'Organisation des Nations Unies (ONU) et à l'Organisation de l'unité africaine (OUA).

Article 8. Le présent accord entre en vigueur à la date de sa signature.

Fait à Alger, le 31 août 1989.

Pour la Grande Jamahiriya arabe
libyenne populaire et socialiste :

(Signé) Jadalla Azzouz ETTALHI,
secrétaire de liaison extérieure
et de la coopération internationale.

Pour la République du Tchad :

(Signé) Acheik IBN OUMAR,
ministre des relations extérieures.

Cet accord-cadre à été signé en présence de Son Excellence Monsieur Boualem Bessaih, ministre des affaires étrangères de la République algérienne démocratique et populaire.

الوحدة الافريقية بهذا الاتفاق.

البند الثامن:

يدخل هذا الاتفاق حيز التنفيذ من تاريخ توقيعه .

حرّر بالعربية و الفرنسية و كلا النصّين لهما نفس القوة القانونية .

الجزائر - بتاريخ 1989/08/31.

عن الجماهيرية العربية
الليبية الشعبية الاشتراكية
العظمى

جاد الله عزوز الطلحي
أمين الاتصال الخارجي
و التعاون الدولي

عن الجمهورية
التشادية

الشيخ ابن عمر
وزير العلاقات
الخارجية

تم التوقيع على هذا الاتفاق الاطار بحضور معالي السيد بوعلام بالسايح وزير خارجية الجمهورية الجزائرية الديمقراطية الشعبية .

الاشتراكية العظمى العمل بالقرارات الخاصة بوقف اطلاق النار المبرمة بينهما.

و تتعهدان بالتوقف عن أي شكل من أشكال الاعتداء و خاصة :

1 - بالتوقف عن الحملات الاعلامية المعادية.

2 - بالامتناع عن التدخل بشكل مباشر أو غير مباشر، أو بأي شكل كان، أو بأي حجة كانت أو مناسبة، في الشؤون الداخلية و الخارجية لكل من البلدين.

3 - الامتناع عن الدعم السياسي و العبادي و المالي و العسكري لكل قوة معادية ضدّ البلد الآخر.

4 - بالعمل على توقيع معاهدة صداقة و حسن جوار و تعاون اقتصادي و مالي بين البلدين.

البند الخامس:

يقرّر الفريقان تشكيل لجنة مشتركة يوكل اليها وضع الترتيبات اللازمة لتطبيق هذا الاتفاق و السهر على اتخاذ الاجراءات الضرورية لذلك.

البند السادس:

يطلب من اللجنة الافريقية الخاصة المشكلة لهذا الغرض و المنبثقة عن منظمة الوحدة الافريقية، السهر على متابعة و تنفيذ ما جاء في هذا الاتفاق.

البند السابع:

تتعهد الجماهيرية العربية الليبية الشعبية الاشتراكية العظمى و جمهورية تشاد باخطار منظمة الامم المتحدة ومنظمة

و لتصميمهما على ايجاد حل سلمي لخلافهما الترابي.

تقرّر ان ابرام هذا الاتفاق:

البند الأول:

يتعهد الفريقان بحل خلافهما الترابي أولا، بكل الوسائل السياسية، بما فيها المصالحة، خلال فترة عام، على سبيل التقريب، الا اذا قرر رؤساء الدول غير ذلك.

البند الثاني:

في غياب حل سياسي لخلافهما الترابي يلتزم الفريقان،

1 - يطرح الخلاف امام محكمة العدل الدولية.

2 - اتخاذ الاجراءات الملازمة للحل القانوني المتعلق بسحب قوات البلدين من المواقع المتواجدة فيها حاليا بتاريخ 89/8/25 في المنطقة المتنازع عليها تحت اشراف لجنة مراقبين افريقيين، و يمتنعان عن أي تواجد جديد على اي صورة كانت.

3 - بتنفيذ هذا الانسحاب الى مسافة يتم الاتفاق عليها.

4 - احترام الاجراءات الملازمة لهذه الى ان تصدر محكمة العدل الدولية قرارا نهائيا بخصوص الخلاف الترابي.

البند الثالث:

يتم تسليم جميع اسرى الحرب.

البند الرابع:

تتابع جمهورية تشاد و الجماهيرية العربية الليبية الشعبية

اتفاقية اطار
من أجل حل سلمي للخلاف الترابي
بين
الجماهيرية العربية الليبية الشعبية
الاشتراكية العظمى
وبين
الجمهورية التشادية

ان الجماهيرية العربية الليبية الشعبية الاشتراكية العظمى من جهة و الجمهورية التشادية من جهة أخرى.

استنادا الى قرارات منظمة الوحدة الافريقية (OUA) وخاصة القرار AHF/Rés.6 (XXV) ، حول الخلاف الترابي الليبي - التشادي من ناحية، و طبقا لمبادىء الامم المتحدة (ONU) الاساسية من ناحية أخرى و خاصة المبادىء التالية :

- حل الخلافات الدولية بالطرق السلمية.
- المساواة في السيادة بين جميع الدول.
- عدم اللجوء الى التهديد بالقوة أو استخدامها في العلاقات بين الدول.
- احترام السيادة الوطنية و السلامة الترابية لكل دولة.
- عدم التدخل في الشؤون الداخلية.

3. LE MINISTRE DES RELATIONS EXTÉRIEURES DE LA RÉPUBLIQUE DU TCHAD AU GREFFIER DE LA COUR INTERNATIONALE DE JUSTICE

N'Djaména, le 1^er^ septembre 1990.

D'ordre de mon gouvernement, j'ai l'honneur de vous communiquer ci-après la requête de la République du Tchad contre la Jamahiriya arabe libyenne au sujet du différend frontalier qui oppose les deux Etats.

I. OBJET DU LITIGE

1. Depuis 1971, la Jamahiriya arabe libyenne occupe une importante partie du territoire tchadien sur laquelle elle prétend avoir des droits. Cette zone, communément appelée « bande d'Aouzou », correspond en fait à la partie septentrionale de la préfecture du Borkou-Ennedi-Tibesti.

Les prétentions de la Jamahiriya reviennent donc à contester l'ensemble de la frontière entre ce pays et la République du Tchad. L'objet du présent litige est de définir celle-ci de façon définitive, en application des principes et règles applicables en la matière entre les parties.

II. EXPOSÉ SUCCINCT DES FAITS

2. Le tracé de la frontière entre la République du Tchad et la Jamahiriya arabe libyenne n'a fait l'objet d'aucun différend jusqu'aux années 1970.

A partir de 1971, des troupes libyennes ont commencé à s'infiltrer dans le nord du Tchad. La présence militaire libyenne s'est accentuée depuis 1973. C'est ainsi qu'entre 1973 et 1987 cette présence libyenne portait sur la quasi-totalité du Borkou-Ennedi-Tibesti (BET), soit sur environ cinq cent mille (500 000) kilomètres carrés.

3. D'abord discrètes, de façon à préserver, si faire se pouvait, les relations pacifiques entre les deux Etats, les protestations tchadiennes se sont faites de plus en plus véhémentes à mesure que l'occupation libyenne s'étendait. Ceci a conduit la République du Tchad à rechercher un règlement pacifique du différend par tous les moyens.

Cette recherche s'est traduite notamment par :

- une multitude de rencontres bilatérales,
- la saisine, à deux reprises, du Conseil de sécurité des Nations Unies, et
- celle de l'Organisation de l'unité africaine (OUA) qui, en 1977, a créé un comité *ad hoc* de six membres pour rechercher les voies et moyens de résoudre le problème et qui, jusqu'à présent, a tenu six sessions ministérielles sans, pour autant, permettre de trouver une solution, malgré les efforts

inlassables de son président et de ses membres et la bonne volonté constante manifestée par la République du Tchad.

A la suite du rétablissement des relations diplomatiques entre la République du Tchad et la Jamahiriya arabe libyenne en octobre 1988, le dialogue direct, renoué entre les deux parties, a permis, d'une part, la tenue d'une rencontre au sommet entre le président Al-Hadj Hissein Habré et le guide de la Révolution libyenne, Muammar Khadafi, à Bamako en juillet 1989, et, d'autre part, la conclusion à Alger, le 31 août 1989, d'un accord-cadre sur le règlement pacifique du différend territorial notifié par le Tchad à l'OUA le 5 septembre 1989 et à l'ONU le 19 septembre 1989.

La commission mixte prévue par l'article 5 de cet accord s'est, depuis lors, réunie à six (6) reprises, mais ses travaux n'ont pu aboutir du fait de l'obstruction de la partie libyenne qui a même lancé, depuis le Darfour, plusieurs attaques armées de grande envergure contre la République du Tchad.

Constatant le blocage complet des tentatives de règlement du différend par des moyens politiques, le Gouvernement tchadien a remis lors de la sixième session de la commission mixte, le 14 août 1990, un projet de compromis de saisine de la Cour internationale de Justice au Gouvernement libyen.

En outre, le président de la République du Tchad et le guide de la Révolution libyenne, lors du sommet de Rabat les 22 et 23 août 1990, ont décidé de saisir immédiatement la Cour internationale de Justice.

La présente requête est formée en application de cette décision et de l'article 2 *a)* de l'accord-cadre du 31 août 1989.

III. Compétence de la Cour

4. La Cour est compétente sur le fondement de l'article 2, alinéa *a)*, de l'accord-cadre du 31 août 1989, aux termes duquel :

> « A défaut d'un règlement politique à leur différend territorial, les deux parties s'engagent :
>
> *a)* à soumettre le différend au jugement de la Cour internationale de Justice ;
> *b)* à prendre des mesures d'accompagnement au règlement juridictionnel, à savoir sur le retrait des forces des deux pays des positions qu'elles occupent actuellement en date du 25 août 1989 dans la région litigieuse sous la supervision d'une commission d'observateurs africains, et à s'interdire toute implantation nouvelle sous quelque forme que ce soit dans ladite région ;
> *c)* à procéder audit retrait à des distances à convenir ;
> *d)* à observer lesdites mesures d'accompagnement jusqu'à ce que la Cour internationale de Justice rende un arrêt définitif sur le litige territorial. »

Conformément aux dispositions de l'article premier du même accord, le règlement politique devait intervenir « dans un délai d'un an ... à moins que les chefs d'Etat en décident autrement ». Toutes les tentatives de règlement ayant échoué ainsi que cela est exposé *supra* (n° 3), et les chefs d'Etat n'ayant pas pris de décision contraire, le différend peut être soumis à la Cour à compter du 1er septembre 1990.

5. A titre subsidiaire la compétence de la Cour est également fondée sur l'article 8 du traité franco-libyen d'amitié et de bon voisinage du 10 août 1955 selon lequel :

> « Les différends auxquels pourraient donner lieu l'interprétation et l'application du présent traité et qui n'auraient pu être réglés par voie de négociations directes seront portés devant la Cour internationale de Justice à la demande de l'une des deux parties, à moins que les Hautes Puissances contractantes ne conviennent d'un autre mode de règlement. »

L'article 3 du même traité dispose :

> « Les deux Hautes Puissances contractantes reconnaissent que les frontières séparant le territoire de la Libye d'une part, des territoires de la Tunisie, de l'Algérie, de l'Afrique occidentale française et de l'Afrique équatoriale française d'autre part, sont celles qui résultent des actes internationaux en vigueur à la date de la constitution du Royaume-Uni de Libye tels qu'ils sont définis dans l'échange de lettres ci-jointes (annexe I). »

Le Tchad ayant succédé à la France, les deux Etats en litige sont liés par ce texte, ainsi qu'ils l'ont du reste reconnu devant le sous-comité des experts juristes et cartographes établi par le comité *ad hoc* de médiation de l'OUA et comme en fait foi le second rapport établi par celui-ci en janvier 1988. En vertu des règles applicables à la succession d'Etats en matière de traités, la République du Tchad et la Jamahiriya arabe libyenne sont liées par ce traité et, notamment, par la clause juridictionnelle de l'article 8.

IV. EXPOSÉ SUCCINCT DES PRINCIPAUX MOYENS SUR LESQUELS REPOSE LA DEMANDE

6. Comme l'a indiqué la chambre de la Cour qui s'est prononcée sur l'affaire du différend frontalier entre le Burkina Faso et la République du Mali :

> « Par le fait de son accession à l'indépendance, le nouvel Etat accède à la souveraineté avec l'assiette et les limites territoriales qui lui sont laissées par l'Etat colonisateur. Il s'agit là du fonctionnement normal des mécanismes de la succession d'Etats. Le droit international — et par conséquent le principe de l'*uti possidetis* — est applicable au nouvel Etat (en tant qu'Etat) non pas avec effet rétroactif mais immédiatement et dès ce moment-là. » (Arrêt du 22 décembre 1986, *C.I.J. Recueil 1986*, p. 568.)

Ce principe du droit international général (et africain) a été confirmé notamment par la résolution AHG/Rés. 16 (I) adoptée au Caire le 21 juillet 1964 par la première conférence des chefs d'Etat et de gouvernement de l'Organisation de l'unité africaine, et par la pratique constante des Etats africains. Il a, au surplus, été expressément accepté à maintes reprises par les Parties au présent litige.

Il en résulte que la Jamahiriya arabe libyenne et la République du Tchad ont hérité des frontières qui étaient les leurs au moment de leur indépendance.

7. Leur tracé résulte avant tout d'une série d'accords franco-britanniques conclus de 1898 à 1924 :

- la convention du 4 juin 1898, complétée par la déclaration du 21 mars 1899 ;
- la convention du 8 septembre 1919, et
- le protocole du 10 janvier 1924, complété par la déclaration du 21 janvier 1924.

Ces accords ont été suivis d'effets, la France occupant et administrant effectivement la zone lui revenant en vertu de leurs dispositions.

Pour sa part, l'Italie a acquiescé à ces accords, en particulier par l'échange de lettres des 10 juillet-15 novembre 1902 (déclaration Barrère-Prinetti), et le tracé en résultant est confirmé *a contrario* par la signature du traité franco-italien du 7 janvier 1935 (accord Laval-Mussolini), dont la ratification aurait modifié cet état de choses, mais qui n'est jamais entré en vigueur. L'Italie a du reste expressément signifié à la France, en 1938, que ce traité n'avait « jamais été mis à exécution ». La situation est donc demeurée inchangée jusqu'à l'indépendance de la Libye.

8. Elle n'a pas davantage été modifiée par le traité d'amitié et de bon voisinage, précité, conclu entre la France et la Libye le 10 août 1955. Cet instrument confirme l'applicabilité du principe *uti possidetis* (art. 3, préc. nº 5) et, en application de ce principe, le tracé de la frontière tel qu'il résulte des accords prémentionnés (nº 7), tous énumérés à l'annexe I de ce traité, qui en fait partie intégrante.

Les Etats intéressés ont conformé leur conduite à ces dispositions, avant comme après l'indépendance de la République du Tchad, qui est intervenue le 11 août 1960.

Les deux Etats ont donc, sans que le doute soit permis, l'obligation de respecter ces frontières et la Jamahiriya arabe libyenne n'a aucun titre sur les territoires qu'elle occupe aujourd'hui indûment.

9. Le Gouvernement de la République du Tchad se réserve le droit de préciser et de compléter cette argumentation dans le mémoire qu'il soumettra ultérieurement à la Cour dans des délais qu'il la prie respectueusement de bien vouloir fixer en application de l'article 43, paragraphe 3, de son Statut.

Il apparaît d'ores et déjà que les prétentions libyennes sont contraires au principe fondamental du respect des frontières héritées du colonialisme et, en particulier, aux accords franco-britanniques et franco-libyen mentionnés ci-dessus.

V. DÉCISION DEMANDÉE

10. En conséquence, la République du Tchad, tout en se réservant le droit de compléter et de modifier la présente requête, et sous réserve de la présentation des preuves et des moyens juridiques pertinents, prie respectueusement la Cour de déterminer le tracé de la frontière entre la République du Tchad et la Jamahiriya arabe libyenne, conformément aux principes et règles de droit international applicables en la matière entre les Parties.

11. Le Gouvernement de la République du Tchad a désigné M. Abderahman Dadi comme agent aux fins de la présente procédure.

Je vous serais reconnaissant de bien vouloir adresser toutes les communications relatives à la présente affaire à l'adresse suivante : Rectorat de l'Université du Tchad, boîte postale 1117, tél. 51 46 97/Fax 51 45 01, N'Djaména (République du Tchad).

Pour le ministre des relations extérieures,
le secrétaire d'Etat,
(Signé) MAHAMAT BOUKHARI ABDEL-BAGUI

Pièce jointe : Accord-cadre d'Alger
(texte en français et en arabe).

4. ACCORD-CADRE SUR LE RÈGLEMENT PACIFIQUE DU DIFFÉREND TERRITORIAL ENTRE LA RÉPUBLIQUE DU TCHAD ET LA GRANDE JAMAHIRIYA ARABE LIBYENNE POPULAIRE ET SOCIALISTE

4. FRAMEWORK AGREEMENT ON THE PEACEFUL SETTLEMENT OF THE TERRITORIAL DISPUTE BETWEEN THE REPUBLIC OF CHAD AND THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

اتفاقية اطار

من أجل حل سلمي للخلاف الترابي

بين

الجمهورية التشادية

و بين

الجماهيرية العربية الليبية الشعبية

الاشتراكية العظمى

[Note du Greffe : pour le texte de l'accord-cadre, voir ci-dessus n° 2]

[Note by the Registry: for the text of the Framework Agreement, see No. 2 above]

5. L'AGENT DU GOUVERNEMENT DU TCHAD AU GREFFIER DE LA COUR INTERNATIONALE DE JUSTICE

N'Djaména, le 28 septembre 1990.

D'ordre de mon gouvernement, et suite à votre lettre n° 83324 en date du 31 août 1990 et aux divers contacts que nous avons eus avec vous, j'ai l'honneur de vous informer de ce qui suit :

— En premier lieu, la République du Tchad qui a saisi la Cour par une communication envoyée par télécopie le 1er septembre 1990, conformément aux dispositions de l'accord-cadre sur le règlement pacifique du différend territorial conclu à Alger le 31 août 1989, constate que sa demande coïncide avec celle contenue dans la notification que la Jamahiriya arabe libyenne lui a adressée le 31 août 1990. Dès lors, la République du Tchad, qui se félicite de la saisine de la Cour internationale de Justice dans cette affaire, considère que ces deux notifications concernent une affaire unique, dont la Cour est saisie en application de l'accord d'Alger, qui constitue le compromis, fondement principal de sa compétence en l'espèce. Dans ces conditions, le Gouvernement tchadien estime que la désignation, à laquelle il a procédé, de son agent et de son coagent, correspond aux exigences de l'article 40 du Règlement de la Cour et à la demande formulée dans votre lettre prémentionnée.

— En second lieu, et quoique la République du Tchad reconnaisse sans restriction la compétence de la Cour pour trancher le règlement territorial qui lui a été soumis par les Parties, mon gouvernement conteste formellement l'affirmation de la Jamahiriya arabe libyenne selon laquelle la frontière entre les deux Etats n'aurait pas fait l'objet d'une délimitation négociée. Celle-ci résulte d'une série d'accords franco-britanniques et franco-italiens, et a été confirmée par le traité d'amitié et de bon voisinage conclu le 10 août 1955 entre la Libye et la France, à laquelle le Tchad a succédé. La République du Tchad se réserve la possibilité de rétablir les faits de manière plus détaillée dans les phases ultérieures de la procédure.

Par ailleurs, j'ai l'honneur de vous notifier, en application de l'article 35, paragraphe 1, du Règlement de la Cour, l'intention du Gouvernement de la République du Tchad d'exercer la faculté que lui confère l'article 31 du Statut de désigner un juge *ad hoc* dans la présente affaire.

Enfin, je vous serais reconnaissant de bien vouloir adresser toute la correspondance relative à cette affaire à M. Abdoulaye Lamana, coagent de la République du Tchad, à l'adresse suivante : Ambassade du Tchad, 52, boulevard Lambermont, B-1030 Bruxelles (tél. 215 19 75/Fax 216 35 26), et dans toute la mesure du possible de m'en faire tenir copie au rectorat de l'Université du Tchad, B.P. 1117, N'Djaména (République du Tchad), tél. 51 46 97/Fax 51 45 01.

Me tenant à la disposition de la Cour pour toute réunion que convoquerait M. le Président J. M. Ruda, en application de l'article 31 du Règlement, je vous prie de croire, Monsieur le Greffier, à ma haute considération.

Abderahman Dadi,
agent de la République du Tchad.

MÉMOIRE DE LA JAMAHIRIYA ARABE LIBYENNE

MEMORIAL OF THE LIBYAN ARAB JAMAHIRIYA

INTERNATIONAL COURT OF JUSTICE

TERRITORIAL DISPUTE
(LIBYAN ARAB JAMAHIRIYA/CHAD)

MEMORIAL

SUBMITTED BY THE

GREAT SOCIALIST PEOPLE'S
LIBYAN ARAB JAMAHIRIYA

VOLUME 1

26 AUGUST 1991

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PART I

INTRODUCTION

1.01 This case was brought before the Court under Article 40, paragraph 1, of the Statute of the Court by notification of an agreement, entitled "Accord-Cadre sur le règlement pacifique du différend territorial entre la Grande Jamahiriya arabe libyenne populaire et socialiste et la République du Tchad". The notification was filed with the Registry on 31 August 1990 on behalf of the Great Socialist People's Libyan Arab Jamahiriya (hereinafter referred to as "Libya")[1]. By this notification, Libya submitted to the Court the territorial dispute ("différend territorial") between Libya and the Republic of Chad (hereinafter referred to as "Chad"), as contemplated by Article 2 of the Accord-Cadre. In its notification, Libya defined the question put to the Court in the following terms:

> "In further implementation of the Accord-Cadre, and taking into account the territorial dispute between the Parties, to decide upon the limits of their respective territories in accordance with the rules of international law applicable in the matter."

1.02 On 3 September 1990, an application was filed with the Registry of the Court on behalf of Chad instituting proceedings against Libya based on Article 2(a) of the Accord-Cadre and, subsidiarily, on Article 8 of the Franco-Libyan Treaty of Friendship and Good Neighbourliness of 10 August 1955 (the "1955 Treaty"). In its application Chad requested the Court -

> "... de déterminer le tracé de la frontière entre la République du Tchad et la Jamahiriya arabe libyenne, conformément aux principes et règles de droit international applicables en la matière entre les Parties[2]."

As translated into English by the Registry, this request was -

> "... to determine the course of the frontier between the Republic of Chad and the Libyan Arab Jamahiriya, in accordance with the

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[1] The Accord-Cadre as printed and translated by the Registry together with the related notifications, applications and letters of the Parties may be found in the International Accords and Agreements Annex, No. 39.

[2] Ibid., p. 20.

principles and rules of international law applicable in the matter as between the Parties[3]."

1.03 The Application of Chad was supplemented by a letter dated 28 September 1990 informing the Court that, having noted that its claim "coincides" with that contained in Libya's notification of 31 August 1990, Chad considered that -

> "... those two notifications relate to one single case, referred to the Court in application of the Algiers Agreement, which constitutes the Special Agreement, the principal basis of the Court's jurisdiction to deal with the matter[4]."

1.04 As indicated in the Court's Order of 26 October 1990, at a meeting between the President of the Court and the Parties on 24 October 1990, agreement was reached that the proceedings in the case had in effect been instituted by two successive notifications of the Accord-Cadre and that the procedure in the case should be determined by the Court on the basis of a notification of a special agreement under Article 46, paragraph 2, of the Rules of Court.

CHAPTER I. THE ORIGIN AND TERRITORIAL EXTENT OF THE DISPUTE

1.05 From the papers filed so far, there appears to be a fundamental difference between the Parties as to the origin and territorial extent of the dispute. As to the dispute's origin, Chad stated in its Application that "[l]e tracé de la frontière" between Libya and Chad "n'a fait l'objet d'aucun différend jusqu'aux années 1970"[5]. In this same paper, Chad claimed to have inherited its boundaries with Libya from France at the moment of its independence and that the course of these boundaries was determined in a series of agreements concluded between 1898 and 1924 by France and Great Britain and acquiesced in by Italy. What Chad did not mention is that these claimed frontiers, supposedly inherited from France, were vigorously contested, first, by the Ottoman Empire and, subsequently, by Italy, right up until the start of World War II; that the French military incursions into the disputed regions were forcibly opposed by the indigenous tribes inhabiting them; and that after the War, when the question of the disposal of the former Italian Colonies was referred to the United Nations, the General Assembly recognised the fact that the southern frontier of Libya with the French territories that are now Chad had yet to be delimited by international agreement.

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[3] Ibid., p. 21.

[4] Ibid., p. 25.

[5] Ibid., p. 14.

1.06 In contrast to the position of Chad, Libya's notification observed -

> "... that the territory in dispute has a long and complex history. The determination of the limits of the respective territories of the Parties in this region involves, *inter alia*, a consideration of a series of international agreements although, in the view of Libya, none of these agreements finally fixed the boundary between the Parties which, accordingly, remains to be established in accordance with the applicable principles of international law[6]."

1.07 A substantial part of this Memorial will be devoted to demonstrating these points. The territorial dispute in this case does not just date from the 1970s; it has its origins in the events affecting Africa at the time of the 1885 Conference of Berlin when the claim to territorial rights and titles of the Ottoman Empire extended over much of this area; and the European Powers, poised for the partition of Africa among them, undertook to respect the rights and integrity of the Ottoman Empire in subsequent declarations. The territorial dispute that evolved from the colonial partitioning of Africa involved at different periods of time the Ottoman Empire, Great Britain, France and Italy; it also concerned most directly the inhabitants of the regions being quarrelled over, the tribes and peoples led by the Senoussi Order.

1.08 As to the *territorial extent* of the dispute, since Chad evidently believes its boundary with Libya was fixed by international agreements that are binding on Libya and Chad, its request to the Court is a narrow one: "de déterminer le tracé de la frontière". In many of Chad's official public utterances, the dispute has been said to be over an area called the "Aouzou strip" or "bande d'Aouzou". This is not so; the case concerns a "territorial dispute", and its resolution calls for the attribution of territory as between Libya and Chad based on which State has the better claim to title over territories to which title has not been resolved by any international agreement. These territories in dispute are not restricted to the so-called "Aouzou strip", which may be a convenient, short-hand way to refer to this territorial dispute but which does not define - and in fact is quite misleading as to - the territorial extent of the dispute.

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[6] *Ibid.*, p. 2.

1.09 Since the dispute is not over the choice of one boundary line or another established by treaty, its territorial extent cannot be precisely defined. However, in Libya's view it concerns the regions of Tibesti, Erdi, Ounianga, Ennedi, Borkou and northern Kanem, lying generally north of 15°N latitude. In this Memorial, these regions will be referred to as the "Libya-Chad borderlands", which appear on Map No. 1. These regions are encompassed within a somewhat larger area identified as the "General Setting" (Maps Nos. 1 and 2)[7]. This is the general area in which the events bearing on this dispute have taken place and to which frequent reference will be made below. In making this geographical reference, Libya does not call into question here its boundaries with other adjoining States not parties to this dispute, each having its own distinctive background, history and legal basis.

CHAPTER II. THE SPECIAL NATURE AND PARTICULARITY OF THE TERRITORIAL DISPUTE BETWEEN LIBYA AND CHAD

1.10 While it is true that no two cases concerning a territorial dispute are ever exactly alike, since each case depends on geographical and historical facts necessarily specific to it (and where a compromis is involved, the Court's competence is governed by its particular text), there are in this case certain distinctive elements that distinguish it in important respects from other territorial disputes or land boundary cases, such as, for example, the Burkina Faso/Mali case, decided a few years ago by the Court[8]. These elements will be set out below considering, first, the Accord-Cadre, second, the kinds of considerations relevant to this particular dispute submitted under the Accord-Cadre, the unique role played by the Senoussi, and, finally, certain other aspects of the dispute that illustrate its particularity. In summary fashion, this Chapter encapsulates much of the case set out later in the Memorial, so it serves as a tour d'horizon of the case as Libya sees it. The support for the propositions made below will appear in the succeeding parts of this pleading.

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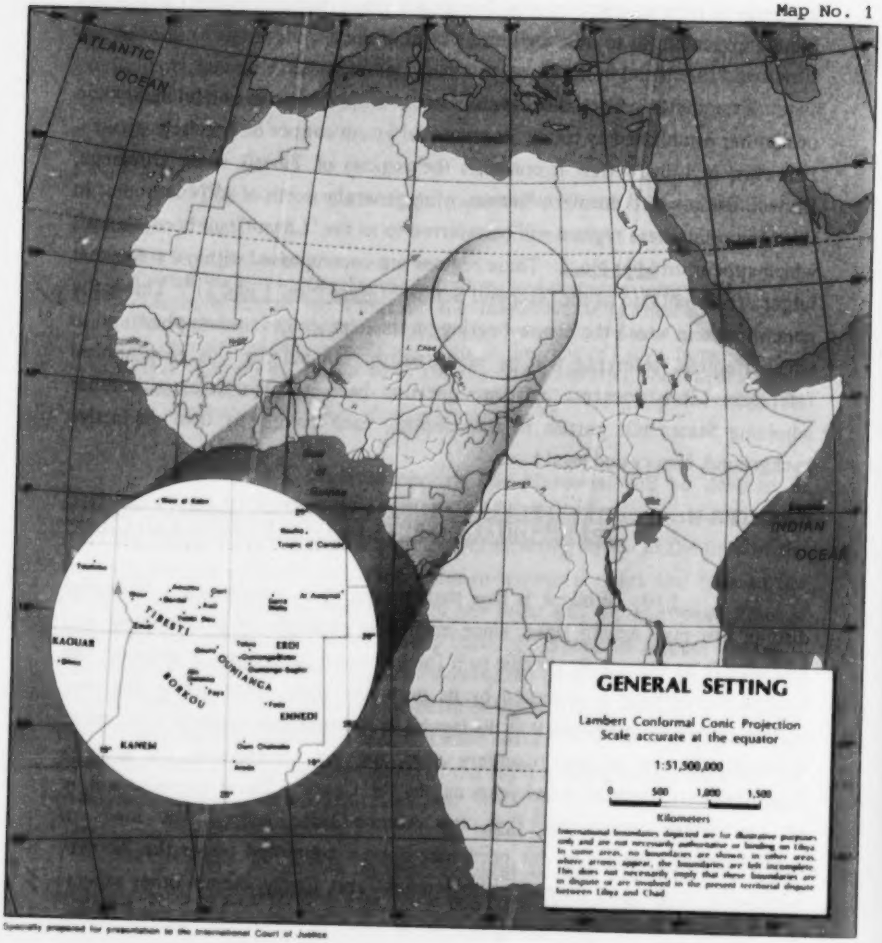
[7] See, para. 1.13, below, where the purpose of defining the General Setting is discussed more fully. See, also, para. 3.02, et seq., below, and in particular para. 3.04, which discusses the legend that appears on the maps specially prepared by Libya to illustrate this Memorial.

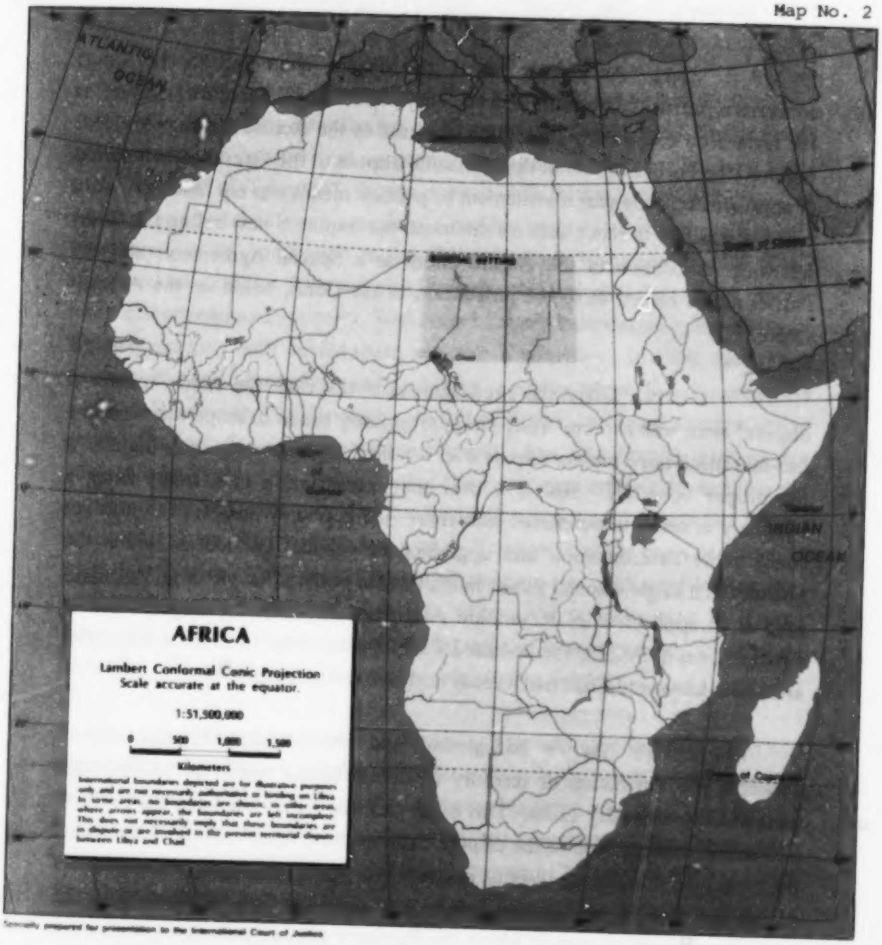
[8] Frontier Dispute, Judgment, I.C.J. Reports 1986, p. 554.

Map No. 1


ATLANTIC OCEAN
INDIAN OCEAN
Gulf of Guinea
L. Chad
Congo
Nile
Tropic of Cancer
Equator
TIBESTI
KAOUAR
ERDI
OUNIANGA
BORKOU
ENNEDI
KANEM
GENERAL SETTING
Lambert Conformal Conic Projection
Scale accurate at the equator
1:51,500,000
0
500
1,000
1,500
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad

Specially prepared for presentation to the International Court of Justice

Map No. 2



International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

Specially prepared for presentation to the International Court of Justice

SECTION 1. The Dispute as Defined in the Accord-Cadre

1.11 As already noted, the dispute submitted to the Court concerns a "territorial dispute" between Libya and Chad. "Territorial dispute" is the term used consistently throughout the text of the Accord-Cadre. Article 2 required the Parties to submit this territorial dispute to the Court within a period of approximately one year if settlement by political means was not reached[9]. As a result of a failure to reach such a settlement, the dispute is now before the Court following notification of the Accord-Cadre as a Special Agreement; and the Parties are in accord as to the jurisdiction of the Court, based on the Accord-Cadre.

1.12 Given the circumstances of this case, the words "territorial dispute" were well chosen. They are appropriately broad in scope to reflect the fact that this is not a narrow dispute over whether one boundary line or another is the proper boundary. Nor is it over the interpretation of a treaty fixing a boundary in order to determine just where that boundary lies. It also does not concern the determination and upgrading of colonial boundaries within the territory of a single colonial Power in application of the principle of uti possidetis juris or in application of Resolution AHG/Res. 16 (I) of the Organisation of African Unity ("OAU"), the so-called Cairo Declaration, adopted in July 1964, after both Libya and Chad had already achieved independence[10].

1.13 As its background and history establish, this dispute concerns the attribution of territory in circumstances where no conventional international boundary exists. This is the task the Court has been called on to perform in order to resolve the dispute. The territory to be attributed lies within the General Setting of the dispute, portrayed on Maps Nos.1 and 2. The purpose of this portrayal of the General Setting is to draw the Court's attention to the general geographical area in which the dispute is located and where the events relevant to the dispute have occurred. It is only intended as a means of geographical reference. Libya submits that, within the General Setting, Libya has a clear title to those regions within the Libya-Chad borderlands that are described in the Submissions and illustrated on Map No. 105, which appears at the end of Part VI.

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[9] "Article 2. In the absence of a political settlement of the territorial dispute, the two Parties undertake: (a) to submit the dispute to the International Court of Justice ... ."

[10] See, OAU Resolution AHG/Res. 16 (I), 21 July 1964, Exhibit 1.

1.14 It is evident that before addressing the task of attribution of territory, a preliminary question has to be resolved. Does a boundary presently exist pursuant to international agreement delimiting the frontier between Libya and Chad east of Toummo? In the presentation to the United Nations of its position on several different occasions, Chad has maintained that there is such a boundary. In its Application to the Court filed on 3 September 1990, Chad reiterated this position. This was also France's official view. Libya denies there is any such conventional boundary. Well before Libya's independence, the Ottoman Empire and Italy both denied there was such a boundary. In 1950, the United Nations General Assembly recognized the absence of such a boundary in adopting Resolution 392(V), which called upon France and Libya to negotiate to delimit the portion of the boundary between Libya and French territory not already delimited[11]. The background of this Resolution reflects the fact that the portion of the boundary at which the Resolution was aimed concerned Libya's southern frontier. Had a boundary east of Toummo already been delimited in 1950, Resolution 392(V) would have had no purpose. No negotiations ever followed between Libya and France to delimit the territory now in dispute between Libya and Chad; and since then there have been no negotiations between Libya and Chad leading to a boundary being fixed.

1.15 As a result, the dispute submitted to the Court involves two main tasks: resolving the question whether such a boundary has been fixed by international convention; and once it has been determined by the Court that no such boundary has been fixed - a conclusion that Libya feels is inevitable - then attributing the territory in dispute between Libya and Chad on the basis of which State has the better claim to title.

SECTION 2. The Sorts of Considerations Relevant to the Resolution of Such a Dispute

1.16 In the 1955 Treaty of Amity between them, Libya and France agreed that the basis on which Libya's boundaries with France or with French territories were to be determined, in negotiations contemplated to follow the Treaty, was to be the "actes internationaux" in force at the time of Libya's independence (24 December 1951)[12]. Annex I of the Treaty contained a list of these "actes"[13]. Thus, Libya and France reached agreement in 1955 on both the criteria for making this determination and the date at which the criteria were to be applicable. However, they never proceeded to negotiate the boundary between the Libyan and Chadian territories as called for by General Assembly Resolution 392(V) and as contemplated by Article 3 of the 1955 Treaty. In the period after Chad gained its independence, no progress has been made by Libya and Chad to negotiate the delimitation of the boundary. This is entirely understandable in the light of the totally opposed views held by Libya and Chad as to the applicability and effect of the international agreements in force as of December 1951.

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[11] United Nations, Official Records of the Fifth Session of the General Assembly, Supplement No. 20 (A/173), 15 December 1950. (A copy of Resolution 392(V) is attached as Exhibit 2.)

1.17 Therefore, Libya respectfully submits that the first task of the Court is to examine in detail all relevant agreements and the results that flow from them in order to determine whether at the time of Libya's independence a conventional international boundary existed between Libya and what is now Chad. Chapter I of Part V of this Memorial is largely devoted to such an examination.

1.18 Having disposed of this question, the Court must deal with the question of which Party has the better claim to title. Here a wide range of facts are relevant, for the criteria to be applied are considerably broader and quite different than would be the case were this a dispute that merely concerned the choice of one boundary line or another as the boundary defined by a treaty.

1.19 The history of the dispute from its inception in colonial times must be examined, including such matters as when the dispute arose, the parties concerned, the rival claims made and their legitimacy at the time. Since the dispute arose out of claims asserted by the Ottoman Empire and claims made by France by virtue of agreements made between France and Great Britain, going back as far as 1890, the colonial environment, the meaning of such claims at the time, and the rather different concepts of the Ottoman Empire based on Muslim precepts from those of the European Powers as to sovereignty and territorial boundaries, will bear directly on this case. So also do the situation and attitudes of indigenous tribes whose territory was being carved up into spheres of influence in Paris and London without any consultation with them, with virtually no knowledge of what was being carved up, and without consultations with third States that had a direct, legitimate interest in the territories and that repeatedly had asserted their claims to it and had protested the Anglo-French agreements purporting to allocate zones as between these two Powers within these territories.

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[12] Traité d'Amitié et de Bon Voisinage entre la République Française et le Royaume Uni de Libye, Tripoli, 10 août 1955, International Accords and Agreements Annex, No. 28.

[13] See, para. 5.477, et seq., below, for a discussion as to why this was not an exclusive list.

1.20 The geographical characteristics of the region are also factors to consider because, *inter alia*, they concern the security interests of the two States in the light of the geographical setting. In addition, determining the basis of title over very sparsely populated regions, such as the Sahara Desert, is not like making such a determination as to populated regions of Europe, for example. The assertion and exercise of sovereignty in such barren areas - particularly at the time the claims were made by the Ottoman Empire - would inevitably be backed by rather minimal evidence of "effectiveness". The nature of the Sahara Desert must be understood in the context of colonial times; only its oases were places to inhabit; otherwise, it was a region to pass through. The desert provided the north/south connecting link between the Mediterranean Sea (and Europe beyond) and the Sudan[14]. This was accomplished by the caravan routes, supported by scattered oases, the control and protection of which were among the key indications of sovereignty in the region.

1.21 It will be demonstrated below in Part IV that the regions that were the object of the rival claims that are at the origin of this dispute were not *terra nullius*. In their southern reaches, known then as the Sudan, where the French military expeditions into this region had first set foot - in the vicinity of Lake Chad and to its south - there had existed for many centuries a series of Muslim Sultanates or Kingdoms. North of the Sudan were organized tribes and confederations of tribes, some of which had come from Libya, others that had an ancient history in the region. Their relationship to the *vilayet* of Tripoli (which at the time included Benghazi) and to the Ottoman Empire, and towards the end of the 19th Century onwards, their relationship to the Senoussi Order, are considerations having a direct bearing on which State has the better claim to title to these regions.

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[14] *See*, para. 3.51, below, and related fn., where "Sudan" is defined.

SECTION 3. The Unique Role of the Senoussi

1.22 The importance of the role played by the Senoussi during this period is dealt with in subsequent portions of this Memorial; and so it is necessary to set out at the outset what is meant by the name "Senoussi". "Senoussi" refers to the Islamic Order or Brotherhood (Confrèrie) founded by Sayyid Muhammad bin Ali al-Senoussi, the "Grand Senoussi", in 1837 near Mecca[15]. The first zawiya to be established in Libya was at al-Baida in northern Cyrenaica in the hills (or jebel) behind the shores of the Mediterranean, in 1843. The nature and functions of the zawiya, a sort of monastery, are described below at paragraph 3.45. "Senoussi" is also used to refer to the family and descendants of the Grand Senoussi - for the leadership of the Order was hereditary - as well as to the followers of the Senoussi Order, the ikhwan ("brothers").

1.23 The Senoussi leadership exercised its functions and authority through the delegation of authority to members of the family or other notables. Important in this chain of command were the sheikhs in charge of each zawiya, which served as central points of Senoussi authority and administration. The Senoussi leadership, including the sheikhs of the zawiyas, was Libyan; all were either appointed by the Head of the Senoussi Order or elected by the ikhwan.

1.24 Although the Order was essentially a revivalist movement in Islam, its mission among the tribes of North Africa and the Sudan cannot be separated into a spiritual and a temporal one. For the concept of separation of Church and State, which may characterize Christianity, does not exist in Islam, and certainly did not for the Senoussi Order. When the tribes in this region - such as the Zuwaya and Mijabra of southern Cyrenaica, the Awlad Sulaiman and Tuareg of Fezzan and Kanem and the Toubou, Bideyet and Zaghawa of Tibesti, Ounianga and Ennedi - were introduced to the precepts of the Senoussi Order, and their members became ikhwan or followers, these tribes became, in effect, "Senoussi tribes". The name Senoussi was applied widely to the followers of the Order, which included virtually all the Islamic tribes and indigenous peoples in the General Setting of this dispute. It was the unity of these tribes under the

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[15] A full discussion of the Senoussi Order appears at para. 3.45, et seq., below. The Order itself is sometimes referred to as the Senoussiya. As is often the case with Arabic words put into English, there are several variations in the spelling of the name "Senoussi".

Senoussi, rather than their separateness as tribes, that became the significant factor.

1.25 Thus, the authority exercised by the Senoussi Order in the Libya-Chad borderlands, as elsewhere, was not merely religious or spiritual in nature. At the zawiyas, libraries were installed, and reading, writing and arithmetic were taught. They were also the centre of Senoussi administration and arbitration. The secular functions of the Order were quickly adapted to the particular circumstances. The Senoussi played an important role in the north/south trade along the caravan routes, the protection of which was organized from the zawiyas that normally were established at the oases along or near these routes. With the advance of French military forces from the southwest, putting in jeopardy the territories of the indigenous tribes, the southern zawiyas, such as at Bir Alali and Aïn Galakka, became fortified centres of resistance; and the Senoussi provided the leadership and coordination of the Senoussi tribes in their fight against the French attempts to usurp their lands.

1.26 In order to administer this defence against the French, the Senoussi leadership moved their base south, first to Koufra, and then to Gouro in Ounianga (to the southeast of Tibesti), until they were forced to move north again into Cyrenaica, in part by the French military forces, who destroyed their zawiyas and pillaged their schools and libraries, in part by the need to organize the opposition against the Italian invasion of their lands in the north, particularly after the collapse of Ottoman opposition following the Treaty of Ouchy (1912). Of course, the indigenous tribes led by the Senoussi remained after the French withdrew from the Libya-Chad borderlands at the start of World War I: for they were the inhabitants of the region.

1.27 In the north, in Cyrenaica, the Senoussi tribes led the fight against colonial occupation by the Italians (just as they had fought the French earlier in the south), driving the Italian forces back along a narrow coastal strip during World War I, and organizing the resistance against the cruel fascist attempts to subjugate the Libyan people following that War. In World War II, the Senoussi-led tribes joined the British war effort against the Italians and Germans. They formed the Libyan Arab Force, operating under their own flag, alongside the British. When, in 1942, Anthony Eden paid tribute to the Senoussi in his famous declaration to the House of Commons[16], he was seen to be addressing all the Senoussi tribes, not just the Senoussi leadership; and this message became a rallying point of the move toward independence - not just in Cyrenaica, but throughout Libya.

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[16] See, para. 5.356, below.

1.28 With the promulgation of the Constitution of the United Kingdom of Libya on 7 October 1951, the leadership of the Senoussi became merged with the new State, the Head of the Senoussi, Muhammad Idris al-Mahdi al-Senoussi, being declared "constitutional King of Libya"[17]. The Constitution's preamble referred to the fact that the representatives of the people of Libya from Cyrenaica, Tripolitania and Fezzan had "agreed and determined to form a union" between them under the Crown of King Idris. In Article 5, Islam was established as the religion of the State, which under Article 2 was to have an "hereditary monarchy". Arabic was made the official language of the State. In his speech of acceptance on 17 December 1950, King Idris referred to the Libyan State as an independent constitutional monarchy comprising the territories of Cyrenaica, Tripolitania and Fezzan "within their natural boundaries"[18].

1.29 Since this merger of the Senoussi Order into the new State of Libya concerned only its secular aspects, in 1963 King Idris promulgated, by Royal Decree, regulations for the Senoussi zawiyas[19]. In this way he dealt with the religious side. The management of the zawiyas, declared to be "independent institutions", was placed in the hands of directors appointed by the King, and it was overseen by the Superintendent of the Royal Household.

1.30 Thus, one of the unique aspects of this case concerns the Senoussi Order - its leadership of the Senoussi tribes throughout the Libya-Chad borderlands and its relationship to the Ottoman Empire, to the French and to the Italians. It must be emphasised that the Senoussi leadership was Libyan, having settled in Cyrenaica in 1843.

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[17] Constitution of the United Kingdom of Libya, 7 October 1951. See, Pelt, A.: Libyan Independence and the United Nations, New Haven and London, Yale University Press, 1970, pp. 902-921. Exhibit 3.

[18] Ibid., p. 459. See, Exhibit 4.

[19] Official Gazette, United Kingdom of Libya, Nos. 4 of 17 March 1963 and 7 of 23 July 1964. Exhibit 5.

SECTION 4. The Contrast Between Libya and Chad at the Time of Independence

1.31 Libya gained international recognition as an independent State in quite different circumstances than Chad. For Libya, it was essentially a matter of freeing itself of military occupation imposed during a period of continual war and foreign oppression since the time of the Italian invasion in 1911 and the subsequent occupation by the French, first of the borderlands and then of Fezzan. In the previous two centuries, Libya had acquired and exercised many of the attributes of a sovereign State[20]. Libya had entered into treaties with other States. It had declared and fought wars and made peace. The diplomatic representatives of foreign States were posted there. Tripoli oversaw, controlled and regulated entry into its hinterland over the caravan routes running from Tripoli south to the region of Lake Chad, and beyond. It had relations with the Muslim States of the interior. It was also, in a rather relaxed fashion, a part of the Ottoman Empire; and in the Firman issued by the Sultan at the time of the signing of the Treaty of Ouchy with Italy in 1912, the autonomy of the peoples of Libya was recognised.

1.32 Libya's independence in December 1951 was not in reality the birth of a brand-new State: it was the recognition on the international level of an independent status that had been repressed over many years by the military forces of other countries and, more recently, by the wars fought over its territory. Although Libya had the special honour of being introduced into the world as a child of the United Nations, its independence in reality did not suddenly spring from the United Nations Resolutions recognizing its international status. For Libya had existed for a long period of time as a political entity that acted as, and in many respects, was regarded as being, a sovereign power. Prior to the decision to grant Libya independence as an independant State, its inhabitants had been consulted as to their wishes in the matter by the Four Power Commission.

1.33 Chad, on the other hand, became an independent State in 1960 entirely as a result of the decolonization by France of its African territories. The boundaries of Chad were drawn as France wished. What was "Chad" was what France called "Tchad" on the map. The name had previously applied to the Lake, not to any territorial unit. Prior to 1960, Chad had not had the same kind of

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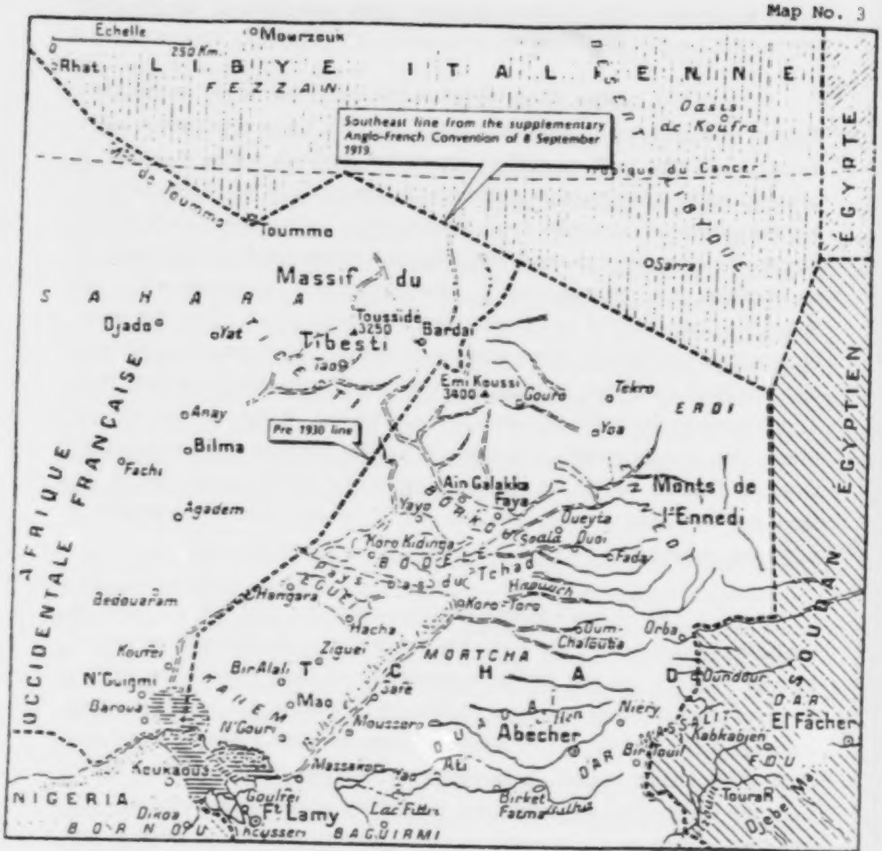
[20] At the time, the names "Tripolitania" or "vilayet of Tripoli" were commonly used, rather than "Libya". In this pleading, these terms are sometimes used interchangably.

Map No. 3



Southeast line from the supplementary Anglo-French Convention of 8 September 1919

Pre 1930 line

Source: Terrier, A. Afrique Equatoriale Française–Histoire des Colonies Françaises, tome IV, Paris, Hanotaux-Martineau, 1931 status as Libya before 1951. At the time of the French colonial incursions into the region, it was Lake Chad that had been the focal point of the French colonial invasion of this part of Africa. In fact, Lake Chad was the objective of the British, the Germans and, later, the Italians, as well. As it evolved, Chad became variously defined territorially as part either of French Equatorial Africa ("A.E.F.") or of French West Africa ("A.O.F."). This was an internal French matter. After 1930, for example, a large part of the northern region of what France considered part of Chad, including Tibesti, was shifted from the A.O.F. to the A.E.F. (Map No. 3). If France had not made this shift, most of Tibesti would be outside of the area that Chad now claims on the basis of its inheritance from France.

1.34 Furthermore, French troops were in military occupation not only of Chad but of the Libya-Chad borderlands, particularly after 1929. Following World War II, France moved further north and occupied and remained in all of Fezzan, making no secret of the fact that it wished to remain there, too. It even allocated the administration of parts of Fezzan to authorities governing either Tunisia or Algeria. It was only after its independence that Libya was able to press for the evacuation of French forces; for as an independent State it could have invited the help of the United Nations; and Libya was even driven to the point of considering placing the issue of French evacuation on the agenda of the first summit meeting of the Non-Aligned Nations. The evacuation of French forces was the overriding purpose of the 1955 Treaty between Libya and France, and France's withdrawal was arrived at with considerable difficulty.

1.35 Thus, Chad emerged as a result of the up-grading of the French colonial possessions within the French African territories of the A.E.F. at the time of independence. Of course, Libya was not part of these French territories or of the French family; and what France drew on its colonial maps as boundaries for Chad could not have affected Libya. Being at the time in military occupation of Fezzan and the Libya-Chad borderlands with ambitions to remain, France may have conceived of the matter differently; if so, the French conception was wrong.

1.36 So the present case does not involve the application of the principle of respect for boundaries inherited from the colonial past; and, as a result, the 1964 Cairo Declaration has no application here. Libya was never a French colony; and France was not at liberty to determine Libya's frontiers. This could only have been done pursuant to an international agreement arrived at on an arms-length basis between France and another State or entity having the sovereign right and power to agree to such a boundary affecting Libyan territory. At the time of Libya's independence in December 1951, the date Libya and France agreed in the 1955 Treaty as the date as of which to determine the boundary, there was no such agreement in force that established a boundary on the southern flank of Libya east of Toummo, and there had never been one. As General Assembly Resolution 392(V) reflected, this boundary had yet to be delimited.

SECTION 5. Aspects of the Colonial Past that Overshadow the Dispute

1.37 Libya and Chad did not inherit a common international boundary from the colonial past; but they have been plagued by colonial conceptions, policies and practices. This has led to a number of basic misconceptions as to the status of the Libya-Chad frontier.

1.38 Libya rejects any notion that it inherited along with Chad all the consequences of these colonial policies and practices. Had an international boundary been established in colonial times between what is now the territory of Libya and Chad, there would have been little choice but to accept it. But no such boundary was established - only the myth of a boundary, embellished by the misinformation disseminated by various French colonial administrations. In the account that follows in Parts IV and V of this Memorial of the history of this dispute and of the various agreements, accords and understandings reached - and of those that were attempted but never were reached - certain characteristics stand out. These may represent policies and practices accepted by members of the "Great Power Club" at the time, but they are not acceptable today.

1.39 These practices included the following:

- misrepresentation and deception, as typified by the repeated assertion by successive French Governments, even to the United Nations, that a map had been annexed to the 1899 Anglo-French Declaration, when it had not been - a fact critical to France's claim that a conventional boundary existed along the southern flank of Libya;

- use of military force, to achieve such objectives as the destruction of the Senoussi zawiyas at Bir Alali and Aïn Galakka, acclaimed at the time and in official histories of the period as glorious episodes in French military history - an act comparable to the destruction of a Christian monastery; and following World War I, the use of military force in violation of international law;

- total ignorance of the African territories being parcelled out, particularly between France and Great Britain in zones of influence agreed between them, unlike the familiarity of the vilayet of Tripoli and the Porte with the Tripolitanian hinterland, to which the Ottoman Empire had asserted title, and which had for a long period been inhabited, or controlled, or overseen by Muslim authorities of one kind or another - territories that were well known to the Porte or to authorities to which it delegated powers, such as the vilayet of Tripoli, and with which they maintained close ties;

- total indifference to the wishes or interests of the indigenous peoples - what was at stake for France and Great Britain was their prestige: did the map of Africa have more parts coloured blue (French) or red (British)?

1.40 It was a manifestation of their rejection of these elements of the colonial background that in the Protocole d'Accord of 12 August 1974 Libya and Chad agreed not to be hindered by this colonial past in their attempt to cement their relationship as peaceful friendly neighbours in a newly independent Africa[21]. Articles 1 and 2 of the Protocole expressed this sentiment in the following way -

Article 1

> "The two sides emphasise their intention to maintain full cooperation in the light of the historical connections between their

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[21] Protocole D'Accord between Libya and Chad of 12 August 1974, International Accords and Agreements Annex, No. 35. See, also, para. 5.567, below, where the Protocole is discussed again.

> fraternal people, and to frustrate all attempts to hinder this mutual cooperation and closeness."

Article 2

> "The frontiers between the two countries is a colonial conception in which the two peoples and nations had no hand, and this matter should not obstruct their cooperation and fraternal relations."

1.41 This expressed the desire that, despite the frontier claims during the colonial period, and the lines of zones of influence drawn on maps in foreign chanceries, Libya and Chad could resolve their differences unhindered by the colonial past. The Accord-Cadre held out the hope that Libya and Chad might be able to settle their territorial dispute by political means. This failed. Perhaps it was doomed to failure because of the inheritance from the colonial period of an illusion - a false illusion as to the existence of a boundary that had been widely, and falsely, disseminated. The principles of the 1964 Cairo Declaration and of uti possidetis were never intended to convert illusory colonial frontiers into international frontiers binding on the African people, a point which will be dealt with more fully in Part VI below, where the principles of law applicable to the case are discussed.

1.42 While the Colonial Powers were squabbling over zones of influence and territorial rights in North Africa, an American poet, Robert Frost, published a set of poems in 1914 entitled "North of Boston"; one of these poems, "Mending Wall", contained a line whose theme should have guided these Powers in their task, but regrettably did not. The line was this: "Good fences make good neighbours". But Libya and Chad were not destined to be left a good fence. As a result, they have found it necessary to come to the Court and ask it to point the way to establishing such a fence, and in this way to assist Libya and Chad to become, and remain, good neighbours.

CHAPTER III. STRUCTURE OF THE MEMORIAL

SECTION 1. The Organization of the Memorial's Text

1.43 The text of the Memorial is divided into six Parts, all of which appear in Volume I:

- Part I is essentially of an introductory character. Part II addresses the subject of jurisdiction. Part III sets out certain relevant geographical data and factual information concerning the physical features of the region, its people, economy and climate, and factors bearing on the strategic significance of the region for Libya.

- Part IV describes the colonial expansion of the European Powers into this part of Africa up until World War I, and its impact on the peoples living there. It deals with the ancient Sultanates and the organized indigenous tribes. It was in this period that the territorial dispute now before the Court in this case matured. The facts set out in Part IV portray the activities during this period of the various players on the stage - the Ottomans, the French, the Italians, the Senoussi Order, and above all, the indigenous peoples led by the Senoussi Order - and the relationships and understandings among them.

- In Part V, the historical background of the dispute is examined, with particular attention given to the relevant treaties, agreements and accords, as well as to the conduct of the various parties concerned at the time. This Part has been divided into two chapters: Chapter I, covering the period up to the time of Libya's independence in December 1951; and Chapter II, covering the period from 1952 until the notification of the Accord-Cadre to the Court in August 1990.

- Part VI contains conclusions regarding the factual aspects of the case; it then turns to the principles of law to be applied in this case to these facts and the conclusions to which they lead.

- Following Part VI are the Submissions of Libya.

SECTION 2. Annexes

1.44 The various documents referred to in this pleading have been placed in annexes according to their subject matter or source. These annexes (and the Volumes in which they may be found) are the following:

- International Accords and Agreements Annex (Vol. 2);
- French Archives Annex (Vol. 3);
- British Archives Annex (Vol. 4);
- Italian Archives Annex (Vol. 5);
- Exhibits Annex (Vol. 6, Parts I and II), which includes documents from the Ottoman Empire Archives.

1.45 The documents in the International Accords and Agreements Annex are numbered sequentially, generally in chronological order. For example, the 1919 Anglo-French Declaration is referred to and has been filed as No. 17 of that Annex.

1.46 The documents in the French, British, Italian and Ottoman Empire Archives Annexes are also placed in general chronological order, but each page within the Annex itself, rather than within the document, has been numbered sequentially in folio fashion, and references to the document will be to that page in the Annex. For example, a British Foreign Office document will be referred to in this way:

> Salisbury-Currie, 13 May 1899, FO 101/94, British Archives Annex, p. 45. (The page number refers to the page in the Annex folio, not to the number of the page within the document referred to.)

1.47 The Exhibits Annex contains all the other kinds of documents referred to, as well as all documents from the Ottoman Empire Archives. Documents to be found in this Annex will be referred to, after giving their proper legal citation, simply as "Exhibit 1, Exhibit 2, Exhibit 3", etc.

SECTION 3. Special Attachment of UN Maps

1.48 At the end of Chapter I of Part V (in Volume I), as a special attachment, appear reproductions of four United Nations maps, placed in chronological order: U.N. Map No. 235, December 1949; U.N. Map No. 256, May 1950; U.N. Map No. 256 (A), November 1955; and U.N. Map No. 256 Rev. 1, March 1958.

PART II
JURISDICTION

2.01 The matter of the jurisdiction of the Court over this dispute was settled at the meeting between the President of the Court and the Agents of the Parties on 24 October 1990, as the Court's Order of 26 October 1990 observes[1]. It was agreed there that the Court's jurisdiction was based on the successive notifications of the Accord-Cadre by the Parties; and that the Accord-Cadre constituted a Special Agreement or Compromis within the meaning of Article 40, paragraph 1, of the Statute of the Court and Article 46, paragraph 2, of the Rules of Court.

2.02 Libya regards the Accord-Cadre as the sole basis of jurisdiction. Chad, on the other hand, in its application filed with the Registry on 3 September 1990, referred to a subsidiary basis of jurisdiction: Article 8 of the 1955 Treaty of Friendship between Libya and France[2]. In Chad's letter of 28 September 1990 supplementing its application, this subsidiary basis does not seem to have been dropped - for the letter referred to the Accord-Cadre as the "fondement principal" of jurisdiction - although the 1955 Treaty was given no emphasis at all there and is not mentioned in the Court's Order of 26 October 1990. Nevertheless, during the meeting with the President, Chad reiterated its subsidiary reliance on Article 8 of the 1955 Treaty.

2.03 It was made plain by Libya's representatives during the meeting with the President of the Court on 24 October 1990 that Libya does not share the view that Article 8 of the 1955 Treaty provides a basis of jurisdiction in this case, subsidiarily or otherwise. Had Article 8 truly been available as a basis of jurisdiction, the part of the Accord-Cadre providing that the dispute be submitted to the Court if not settled on the political plane would not have been necessary. But in the circumstances, since the Parties are in agreement as to the jurisdiction of the Court based on the Accord-Cadre, the Court need not consider whether any subsidiary basis of jurisdiction does exist. Accordingly, Libya can explain why it rejects the application of Article 8 of the 1955 Treaty to the present case in just a few paragraphs.

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[1] The Order appears in the edition printed by the Registry, Exhibit 6.

[2] Article 8 reads as follows:

> "Les différends auxquels pourraient donner lieu l'interprétation et l'application du présent traité et qui n'auraient pu être réglés par voie de négociations directs seront portés devant la Cour Internationale de Justice à la demande de l'une des deux Parties à moins que les Hautes Parties Contractantes ne conviennent d'un autre mode de réglement."

2.04 Article 8 of the 1955 Treaty provides no basis for the Court's jurisdiction for a number of reasons. Under the principles of international law codified in the 1978 Vienna Convention on Succession of States in respect of Treaties[3], the 1955 Treaty, a bilateral Treaty of Amity and Good Friendship between Libya and France, would not generally speaking be binding as between Libya and Chad, absent their express consent that the Treaty apply (the so-called "non-transmission" principle). No agreement on consent exists or may be implied from the conduct of Libya or Chad. Apparently, France considers the 1955 Treaty between Libya and France still to be in force; and the Treaty has not been terminated by Libya. However, Libya and Chad entered into a Treaty of Amity between them on 2 March 1966[4], in which no reference to the 1955 Treaty was made, indicating that they considered a new Treaty of Amity to be appropriate after Chad's independence.

2.05 Before considering the "non-transmission" principle, it should be recalled that there is an important exception to this general rule, one that concerns boundary regimes. Since this matter is again dealt with in Part VI, it need only be briefly touched on here[5].

2.06 Article 11 of the 1978 Vienna Convention provides that a succession of States does not affect (i) a boundary established by treaty or (ii) obligations and rights established by a treaty and relating to a regime of a boundary[6]. As this Memorial makes clear, the 1955 Treaty established no boundary between Libya and Chad. Although the Treaty may have created obligations and rights relating to the regime of such a boundary, with the result that Article 3 and Annex I of the 1955 Treaty apply to Libya and Chad, this does not change the fact that Article 8 of the Treaty does not apply to them in the light of two rules of treaty law: the "non-transmission" principle just mentioned; and the rule governing the severability of the provisions of a treaty.

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[3] A/Conf. 80/31 and corr., 23 August 1978; U.N. Conference on Succession of States in Respect of Treaties, Official Documents, Vol. III, pp. 197-209. The text of the Vienna Convention may also be found in 72 Am.J.Int'l.L., Vol. 72, 1978, at p. 171.

[4] Treaty of Amity Between Libya and Chad, 2 March 1966. International Accords and Agreements Annex, No. 32.

[5] See, para. 6.13, et seq., below.

[6] See, para. 6.14, below, and related citations.

2.07 The "non-transmission" principle has been explained in this way in the 1987 treatise of Nguyen Quoc Dinh, Patrick Daillier and Alain Pellet on the subject[7]:

> "L'état successeur est un Etat tiers vis-à-vis des traités de l'Etat prédécesseur; il ne peut donc en revendiquer le bénéfice. La solution est commandée par la règle fondamentale de l'effet relatif des traités[8]".

The authors add that a clear distinction must be made between bilateral and multilateral treaties:

> "Les premiers ne restent en vigueur que si l'Etat nouvellement indépendant et l'autre Etat partie en conviennent, expressément ou implicitement[9]".

They also make another distinction between what they call "traités personnels" and "traités réels": the former are those concluded intuitu personae; while the latter concern a territory. Among the first category ("traités personnels"), the authors expressly include "traités d'alliance". Thus, there can be no doubt that the 1955 Treaty itself - excluding Article 3 and Annex I, which concern the regime of a boundary - falls into such a category according to the authors, and this seems correct.

2.08 The same distinction has been made by O'Connell[10], who explains the distinction between "personal" and "dispositive" treaties by saying that for "personal" treaties-

> "... the performance of the treaty [is] a matter of reciprocal rights and duties of governments in the ordinary exercise of political

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[7] Dinh, N. Q., Dallier , P., Pellet, A.: Droit International Public, Paris, Librairie Générale de Droit et de Jurisprudence, 3e ed., 1987.

[8] Ibid., p. 486. (A copy of this page is attached as Exhibit 7.)

[9] Ibid., p. 488. (A copy of this page is attached as Exhibit 7.)

[10] O'Connell, D.P.: State Succession in Municipal Law and International Law, Cambridge, 1967, Volume II, pp. 231, et seq.

> discretion, affecting the State as such rather than specified territory within it...[11]."

Assimilating the traditional distinction between "personal" and "dispositive" treaties to the distinction between non-transmissible and transmissible treaties, O'Connell points out that-

> "... if one part of a treaty deals with a subject-matter such as a boundary, so that one could say it fell into the category of transmissible treaties, it does not, upon devolution, carry the remainder of the treaty with it when this latter portion is of such a character that it would not normally be transmissible[12]."

2.09 In the passage just quoted, O'Connell raises the second rule of treaty law applicable here: the severability of treaty provisions. What he says is that merely because the boundary provisions of a treaty may carry over to the successor State does not mean that the other provisions are carried over if they are of a non-transmissible character.

2.10 A similar question arose in the Temple of Preah Vihear case[13]. In that case, Cambodia invoked the jurisdiction of the Court on the basis of, first, Thailand's declaration under the optional clause and, second, the incorporation of a jurisdiction clause into the 1937 Treaty of Friendship between Siam and France. The Court found it had jurisdiction under the optional clause and hence did not have to deal with the second basis of jurisdiction asserted by Cambodia. But it is of interest to note that Thailand had opposed the alleged second basis of jurisdiction, arguing that no new State succeeds to "political provisions in treaties of the former State", among which were pacific settlement provisions, for otherwise a bilateral treaty would be transformed into a "multilateral pacific settlement treaty".

2.11 It is assumed that the Court in this case will take the same view of the matter as it did in the Temple of Preah Vihear case and consider that it need not address the question of the subsidiary basis of jurisdiction that Chad maintains exists. But if the Court were to consider the question, it is clear that Article 8 of the 1955 Treaty is not transmissible.

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[11] Ibid., p. 231. (A copy of this page is attached as Exhibit 8.)

[12] Ibid., p. 301. (A copy of this page is attached as Exhibit 8.)

[13] Temple of Preah Vihear, Preliminary Objections, Judgment, I.C.J. Reports 1961, p. 17.

2.12 There is a third aspect of invoking Article 8 of the 1955 Treaty as a subsidiary basis of jurisdiction, which concerns the question of registration of the Treaty under Article 102 of the United Nations Charter. Under Article 102, a treaty that has not been registered may not be invoked before an organ of the United Nations[14]. According to the information Libya presently has, France failed to register the 1955 Treaty until February 1991, and only then at the behest of Chad - more than 34 years after the Treaty had been signed, and six months after the commencement of this case. Since this fact has an important bearing on the substantive part of this case, its discussion has been deferred until the Treaty itself is discussed[15]. It is evident, however, that Article 8 of the Treaty cannot provide a subsidiary basis of jurisdiction, quite aside from the issue of invoking the Treaty in the light of the fact that France did not register the Treaty under Article 102 of the Charter until after this case had been brought. Any further discussion of this aspect of the case will be deferred until after all the facts concerning registration of the Treaty are examined. It is assumed that Chad's Memorial will set out the pertinent facts and provide the relevant documents since in its Application Chad has invoked the Treaty.

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[14] *See*, in this regard, the commentary on Article 102 appearing in Cot, J.P. and Pellet, A.: *La Charte des Nations-Unies*, Paris, Economica; Brussels, Bruylant, 1985, p. 1355.

[15] *See*, para. 5.504, *et seq.*, below.

PART III

GEOGRAPHICAL FACTS: THE REGION'S PHYSICAL GEOGRAPHY, PEOPLES, AND ECONOMY; AND THE IMPORTANCE OF THE SOUTHERN FRONTIER TO LIBYA'S SECURITY

CHAPTER I. GEOGRAPHY

Section I. Introduction

3.01 The territorial dispute submitted to the Court by Libya and Chad cannot be understood adequately without a grasp of its geographical setting or without knowing where on the map the relevant events occurred. Lord Salisbury, one of the dominating figures of the colonial period, is reported to have quipped -

> "... the constant study of maps is apt to disturb men's reasoning powers[1]."

But it is evident from the historical record that Lord Salisbury was himself conversant with maps and fully aware of the ignorance of the Colonial Powers as to the geography of Africa. In one of his frequently-quoted remarks he suggested how superficial and arbitrary were the territorial agreements of the late 19th Century made by diplomats, comfortably ensconced in their chanceries in London and Paris, in total ignorance of the geography of the African regions they were busy allocating to each other. For in 1890, when the partition of Africa was about to reach its peak, Lord Salisbury was quoted as saying:

> "We have been engaged ... in drawing lines upon maps where no white man's feet have ever trod; we have been giving away mountains and rivers and lakes to each other, but we have only been hindered by the small impediment that we never knew exactly where those mountains and rivers and lakes were[2]."

He might have added - and without the slightest concern as to the wishes of the inhabitants.

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[1] See, reference in Lowe, C.J.: The Reluctant Imperialists: British Foreign Policy 1878-1902, London, Routledge and Kegan Paul Ltd., 1967, p. 135, fn. 21. Exhibit 9.

[2] Quoted in The Times, 7 August 1890. Exhibit 10.

3.02 Map No. 1 appearing at the start of the Introduction (Part I) is a map of the African continent on which a circular-shaped area labelled "General Setting" has been highlighted. Map No. 2 shows the "General Setting" as a rectangular-shaped shaded area. This is the area within which the territorial dispute between the Parties is located and where the events relevant to the dispute have largely occurred[3].

3.03 The maps and illustrations appearing in this Memorial have either been specially prepared for this case or are reproductions of maps appearing elsewhere[4]. Each of the specially prepared maps is based on one of seven base maps. These base maps, identified as Base Maps A-G, contain the names of places, regions and areas mentioned in the text. Those base maps not appearing in the text may be found at Exhibit 11.

3.04 Specially prepared maps showing boundaries have been legended, although the complete legend does not appear on some of the smaller maps due to lack of space. The following is the complete legend, which is deemed to apply to all such maps:

> "International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad."

3.05 Many maps are reproductions of maps found in books, atlases, theses, articles, or special studies. Frequently, the author of such maps

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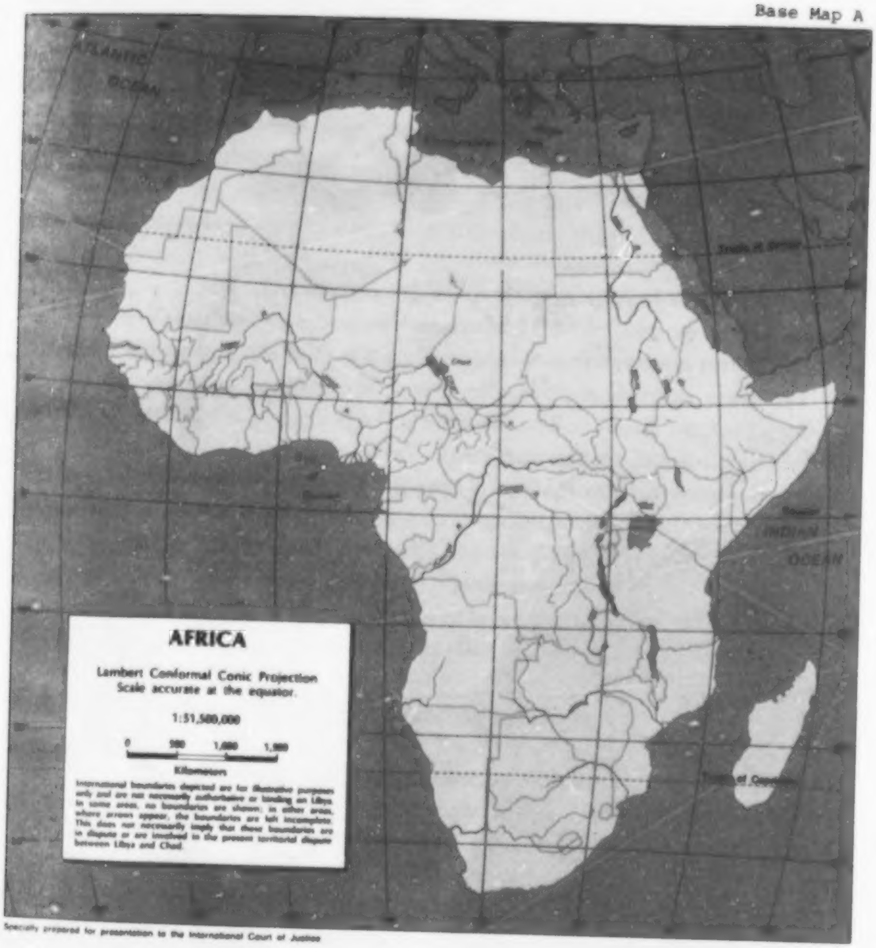
[3] See, para. 1.09, above.

[4] The maps for this Memorial have been prepared by Maryland Cartographics, Inc., under the supervision of Scott B. Edmonds. Mr. Edmonds supervised the preparation of maps for Libya in both the Libya-Tunisia Continental Shelf and the Libya-Malta Continental Shelf cases before the Court. His background includes a BA in geography and an MA in cartography from the University of Maryland, where he subsequently taught cartography for nine years. For the past six years, Mr. Edmonds has served as president of Maryland Cartographics, a company involved in all aspects of thematic and technical mapping.

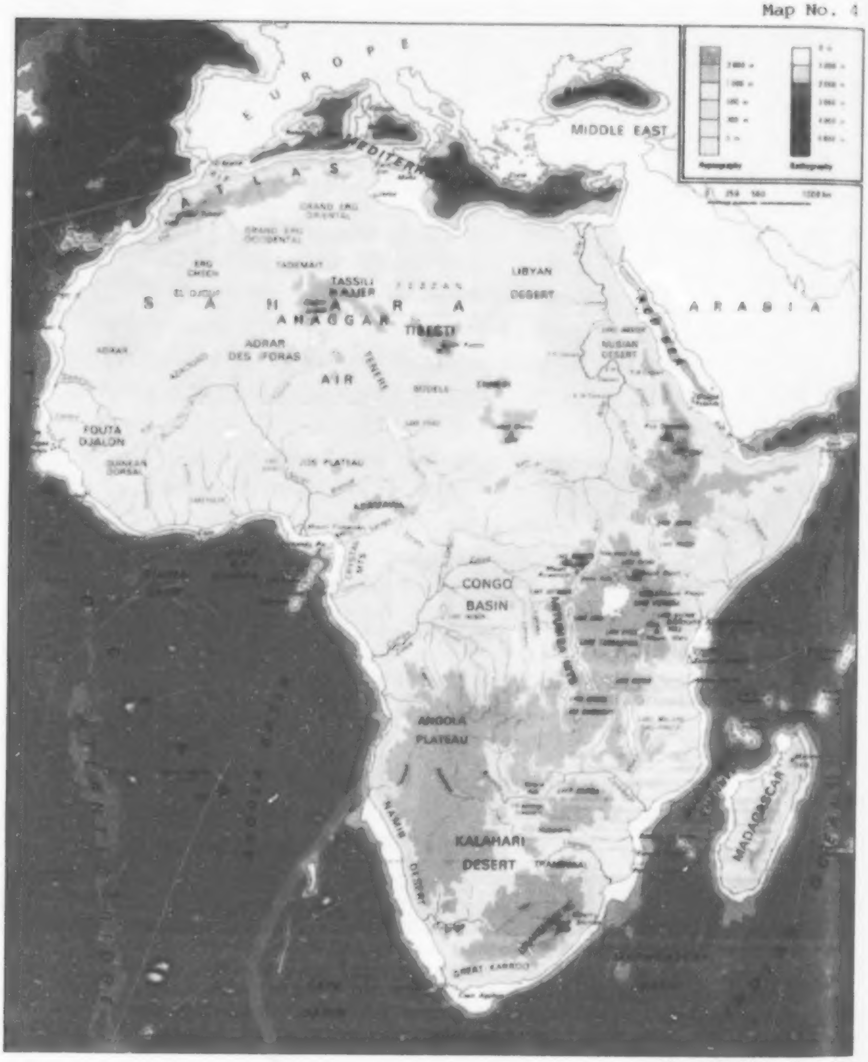
The maps presented herein have been based upon Aeronautical Charts published by the Defense Mapping Agency of the United States. Maps used include: Global Navigation and Planning Chart #11 (GNC 11) at a scale of 1:5,000,000; and Operational Navigation Charts (ONC) #G2, G3, H3, H4, J3, J4 and J5, at a scale of 1:1,000,000. Both the (GNC) and (ONC) series are plotted on a Lambert Conformal Conic projection in the mid-latitudes.

Base Map A


ATLANTIC OCEAN
Tropic of Cancer
Chad
Gulf of Guinea
Equator
INDIAN OCEAN
Tropic of Capricorn
AFRICA
Lambert Conformal Conic Projection
Scale accurate at the equator.
1:51,500,000
0 500 1,000 1,500
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

Specially prepared for presentation to the International Court of Justice

Map No. 4



Source: Atlas of Africa, Editions Jeune Afrique, Paris - 1973 has indicated international boundaries. Rather than tamper with each map that shows what Libya regards as an incorrect boundary, so as to delete or adjust the line shown, these maps have been reproduced as is; but their appearance in this Memorial does not imply any acceptance by Libya of any boundary line shown[5]. However, some of the maps reproduced here have had annotations or explanations placed on them. The cases where this has been done are quite obvious, so the maps in question have not been further burdened by an explanatory note.

3.06 The Court is well aware of the problem of transposing the spelling of place names, particularly Arabic names, from one language to another; and it will be seen that many of the place names in the Libya-Chad borderlands are Arabic names. The French sometimes replaced the Arabic place names with French names. For example, Bir Alali was renamed Fort Pradié; but it has since reverted to the original Arabic name[6]. There is no uniform practice as to how these Arabic names appearing on maps and in historical and geographical studies should be spelled in other languages. In this Memorial, French spellings of Arabic names have generally been used, since they are often more satisfactory from a phonetic standpoint. As a guide to place names, there has been placed in Exhibit 11, with the Base Maps, a glossary of geographic terms that appear on the maps and are used in the text of this Memorial.

SECTION 2. The General African Setting of the Dispute

3.07 If Base Map A is examined together with a relief map of Africa, reproduced here as Map No. 4, it can be seen that the northern frontier of Libya consists entirely of the Mediterranean Sea, a coastline of almost 1,000 nautical miles. It is not, however, a straight coastline; for it contains the deep indentation made by the Gulf of Sirt, which intrudes southward into the Libyan landmass by as much as 135 nautical miles, separating Libya's two major cities,

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[5] For a further discussion of maps, see, paras. 5.526-5.528 and 5.551-5.552, below. A series of maps issued by the U.N. appear as a special annex at the end of Chapter I of Part V of this Memorial. In the course of the Memorial, frequent references will be made to the works of various experts and authorities. These are cited only in respect to the particular point concerned, and by referring to those sources Libya does not necessarily embrace views expressed there or elsewhere on other subjects by the same authors.

[6] "Bir" in Arabic means "well"; "alali" means "up above".

Tripoli and Benghazi[7]. As will be discussed more fully in Chapter IV below, as a result of its length and of this indentation, Libya's northern flank is highly vulnerable to attack from the sea. Further increasing Libya's security concerns is the fact that Libya has frontiers with six States, three of which extend for 1,000 kilometres or more. The internal stability of these neighbouring States is also a factor that could have a direct bearing on Libya's security. Since almost its inception as an independent State, Chad has been wracked by rebellion and then civil war, accompanied by the intervention of foreign States. These circumstances have given rise to serious concern by Libya over the security of its southern flank, particularly since a boundary in this area has never been agreed and, hence, remains to be determined.

3.08 Chad is a land-locked State, a fate shared by five other neighbouring States in this part of the African continent, all of which were once French colonies (Map No. 5). This fate results from the way in which the boundaries as between these former French colonies were determined. Lying on Chad's western frontier, and spilling over into Nigeria and Cameroon, is Lake Chad, which was a focal point of colonial expansion into Africa and a special target of the three-pronged French military advance into the region during the period 1876-1900[8]. Running across southern Chad, and emptying into Lake Chad, is the Chari River. The geography - and much of the history - of Africa is dominated by its rivers, particularly the three great African rivers - the Niger, the Congo (or Zaire) and the Nile. All of Libya, however, and the Libya-Chad borderlands lying north of Lake Chad, are located outside the basins formed by these rivers (Map No. 6), which results in the land being mostly arid and in large part desert.

3.09 Libya has no basic topographical discontinuities or divisions north of the Tibesti massif. Most of Libya is comprised of the vast desert of the Sahara. However, running in a northwest/southeast direction from southern Algeria to the western frontier of Sudan are three Saharan mountain massifs (Maps Nos. 4 and 7): the Tassili in Algeria, which surprisingly played no role in determining Algeria's boundaries; the Tibesti massif, which lies within the area of the General Setting of this dispute and is part of the Libya-Chad borderlands; and the Ennedi, which also lies within the borderlands. All three are linked by a belt

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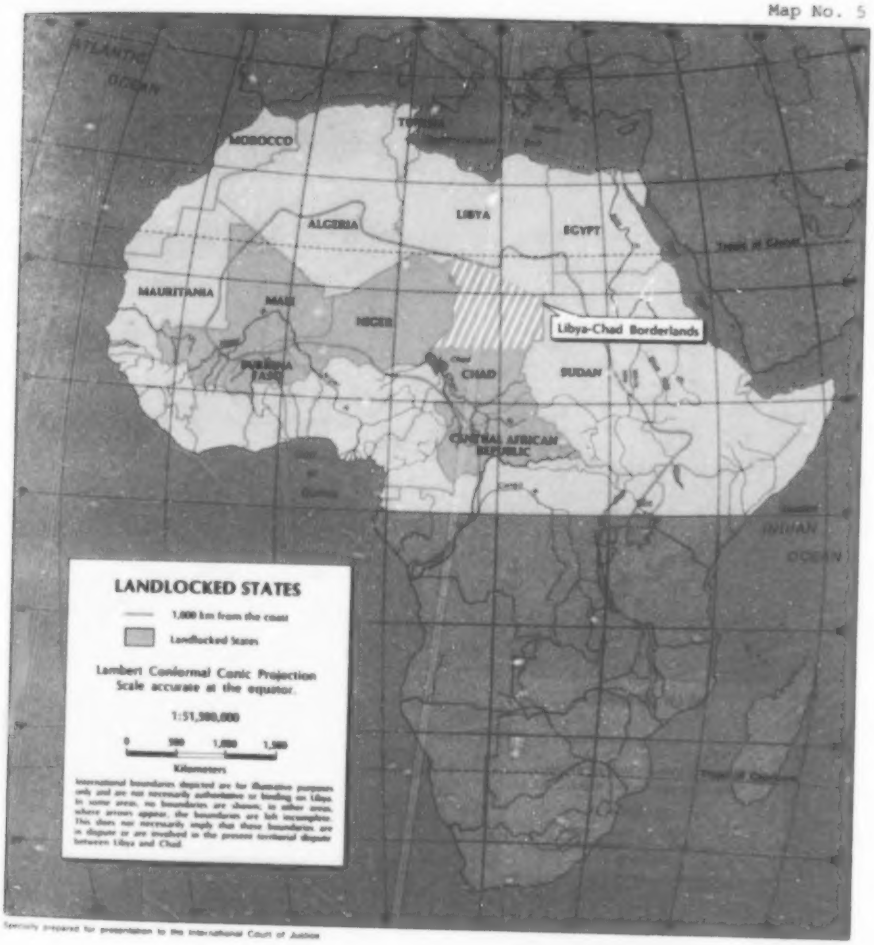
[7] See, for example, Map No. 24, referred to in para. 3.98, below.

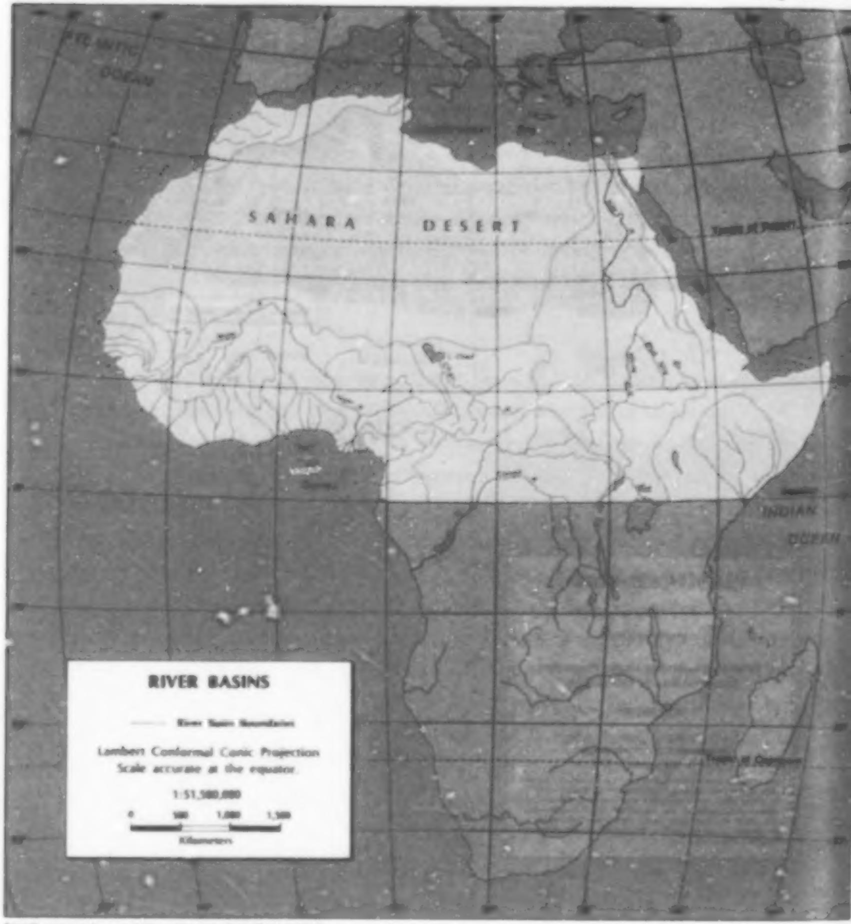
[8] See, para. 4.52, et seq., below, and Map No. 32, referred to in para. 4.56.

Map No. 5


ATLANTIC OCEAN
MOROCCO
TUNISIA
ALGERIA
LIBYA
EGYPT
Tropic of Cancer
MAURITANIA
MALI
NIGER
Libya-Chad Borderlands
CHAD
SUDAN
BURKINA FASO
CENTRAL AFRICAN REPUBLIC
Gulf of Guinea
INDIAN OCEAN
Tropic of Capricorn
LANDLOCKED STATES
1,000 km from the coast
Landlocked States
Lambert Conformal Conic Projection
Scale accurate at the equator.
1:51,500,000
0
500
1,000
1,500
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

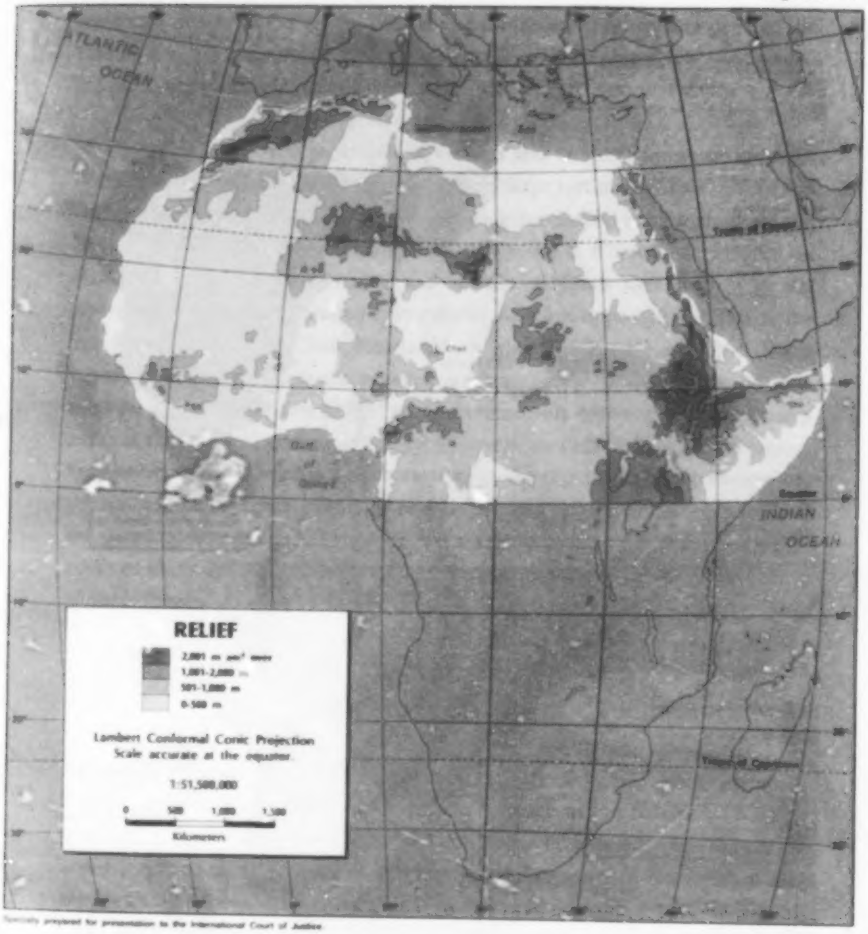
Specially prepared for presentation to the International Court of Justice

Map No. 6



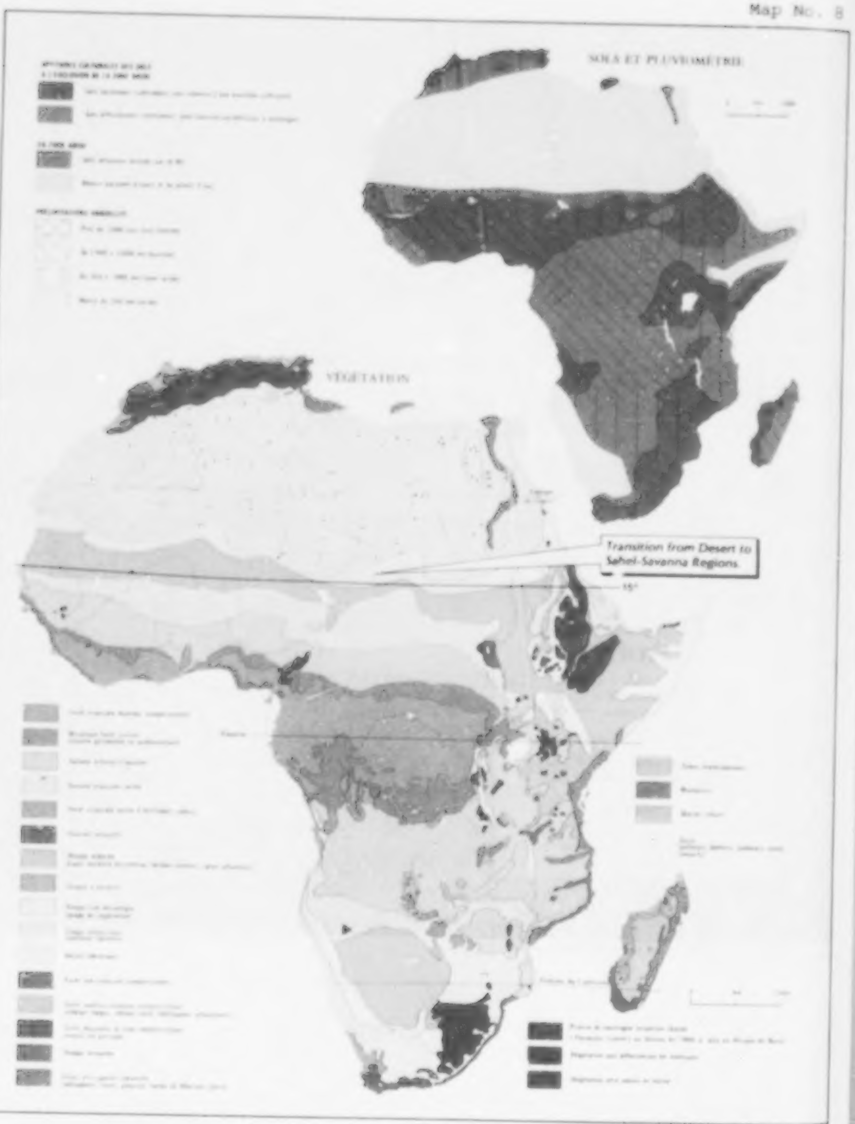
Specially prepared for presentation to the International Court of Justice

Map No. 7



Specially prepared for presentation to the International Court of Justice.

Map No. 8



Source: Atlas Historique de L'Afrique Les editions du Jaguar, 1988, p. 19

f land 500 to 1,000 metres high running from the Grand Erg Occidental in the orthwest almost as far as the Nile in the southeast. The highest peak of the ibesti, Emi Koussi, is 3,415 metres in height. The Tibesti massif is about equal in ea to Switzerland and Austria combined.

3.10 The geography of Chad is very different from that of Libya. or although Chad and Libya each have a very large landmass (Libya: 1.8 million n^2; Chad: 1.234 million km^2)[9], Chad's rectangular-shaped territory is elongated a north/south direction extending to slightly south of 8°N latitude. Hence, at out 15°N latitude, the climate and terrain of Chad shift from a desert vironment to a transitional one as tropical Africa is approached. This is the hel-Savanna area of Chad, illustrated on Map No. 8. Hence, Chad has a onounced geographic divide between north and south in the vicinity of 15°N itude. As will be shown further on, a similar divide between north and south sts at the political, economic and ethnic levels, as well. This is not surprising. r the physical geographical characteristics of the region, which are themselves result of its geological history, have a direct effect on climate and it, in turn, on economy and the inhabitants. So it is no mere coincidence that the division ween north and south should occur at roughly the same latitude in respect to these factors.

SECTION 3. The Implications of the Special Environment of the Sahara Desert

3.11 Criteria for determining boundaries, developed for lication in other parts of the world, such as the heavily populated regions of ope, are not easily applied to a desert area such as the Sahara. To do so perly, it is necessary that the special conditions of a desert environment be erstood and taken account of. The Sahara is composed of vast areas of arid ain and sand seas, sparsely inhabited by scattered nomadic tribes. To inhabit e spaces means to occupy, often only sporadically, a few, widely separated es. Moreover, the Sahara is one of the most hostile environments on earth. he end of the 19th Century, when transportation across deserts was on foot or amel, its hazards were daunting. It is, in fact, remarkable that explorers such

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This and other measurements contained in this Part, since they depend frequently on French sources, assume the Libya-Chad boundary to be that claimed by France and now by Chad. Obviously, this does not imply acceptance by Libya of this boundary. However, in order to make measurements, a boundary has to be fixed hypothetically, and if French measurements are referred to they normally assume the French view as to this boundary.

as Barth, Nachtigal, Duveyrier, Clapperton, and others, who explored this part of Africa, did venture into such a remote, forbidding and dangerous region of the earth. The routes taken by most of these intrepid explorers were selected so as to skirt, so far as possible, the central desert area. In fact, the principal routes followed by the French in their colonial penetration of Africa were from the west or south, that is from the Atlantic coast of West Africa, rather than southward across the desert from the Mediterranean Sea[10], except for the route south from Algeria along a line of longitude well to the west of Lake Chad (Map No. 9).

3.12 Since ancient times the Sahara has provided the north/south communications link between the Mediterranean Sea and Europe (on the north), and fertile, tropical - and, at the outset of the colonial period, fascinating and mysterious - Africa (on the south). But it was a place to cross rather than to inhabit, except for settlements in widely-scattered oases, which can be likened to islands in the sea; and the Sahara is aptly described as a great sand sea. In order to serve as a communications link, particularly before the era of motorised transportation, the scattered oases and their wells had to be maintained so that caravans could cross the desert at all. Thus, the focal points of this north/south axis were the caravan routes and the oases; and the people who controlled these routes and oases controlled the desert and the communications routes between the north and the south. The caravan routes were an easy prey for the nomadic tribes of the desert. Some of these nomadic tribes, such as the Toubou of the Tibesti, were people the likes of which the European travellers who came to visit during the 19th Century had never before encountered. It was said of the Toubou at that time that a man's reputation was formed not by how many friends he had but by how many enemies. It is an indication of the authority exercised over the desert tribes by the Senoussi Order that, when the Order turned its attention southward, it was able to organize the protection of these routes and oases so that commerce could flourish to the benefit of the regions served, as well as to the Senoussi themselves[11].

3.13 In a certain way the Sahara was well-suited to the Muslim nomads. It was especially so for the Libyan Senoussi, who were more comfortable and more effective in pursuing their mission away from the urban centres and in areas of the desert where the tribes were not well organized and whose religious

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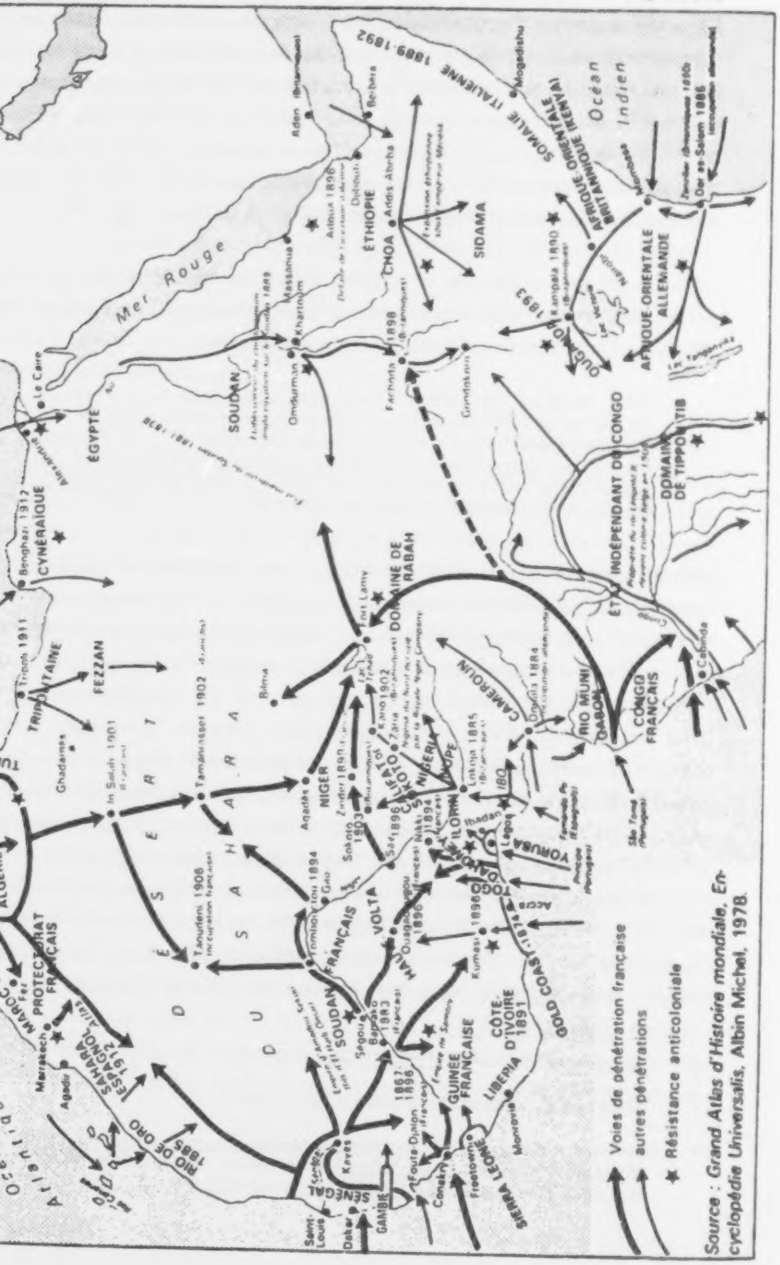
[10] See, para. 4.39, below.

[11] See, para. 3.54, et seq., below.

Map No. 9



Source : *Grand Atlas d'Histoire mondiale, Encyclopédie Universalis,* Albin Michel, 1978.

habits required some rejuvenation. Moreover, for the Arabs and other peoples of Libya the desert has historically been regarded as a place of safety - while the sea, from which repeated invasions have come, has been regarded with apprehension. Most of Africa north of about 15°N latitude - the area of desert climate - was peopled by Muslim tribes, although some had been converted to Islam rather late[12]. South of there, in the transitional belt of the Sahel between the desert and tropical Africa, extended a number of Islamic Sudanic States, from the Atlantic Ocean to the Nile, whose origins went back to the early Middle Ages[13].

3.14 The special affinity of this part of the world for Muslim people may have been the result in part of Islamic concepts of sovereignty and of the State. These have been described in the following way:

> "The basis of the Islamic state was ideological, not political, territorial or ethnical and the primary purpose of government was to defend and protect the faith, not the state. . . . Political boundaries were unknown to Islam except those that separated the dar al-islam, the area inhabited by Muslims, from the dar al-harb, the abode of war inhabited by unbelievers[14]."

Islamic constitutional theory rests on a contractual relationship between ruler and ruled and on legitimized delegation of authority, in which Islam itself is the legitimizing and sovereign component. The Islamic world was not primarily concerned with concepts such as boundaries or territorial sovereignty. Indeed, in a region such as the Sahara, there was no practical way of linking together far-flung and isolated desert communities under cohesive, territorially defined, political authority, particularly given the limited technical means to do so by any Power at the time. Since discrete communities established their own contractual constitutional arrangements with specific rulers - the recipients, in theory, of delegated authority -, a considerable degree of autonomy was provided to such communities, under the mantle of ultimate Ottoman sovereignty, represented by the Caliph - Sultan of the Ottoman Empire. This was particularly so in the case of the Central Sahara. Territorial control tended to be a local, administrative matter. While sedentary agriculturalists and land owners elsewhere may have

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[12] See, para. 3.35 below, and Map No. 19 appearing there.

[13] These Sudanic States will be discussed in Part IV below.

[14] Lambton, A.K.S.: State and Government in Medieval Islam; an Introduction to the Study of Islamic Political Theory: the Jurists. Oxford, Oxford University Press, 1981, p. 13. (A copy of this page is attached as Exhibit 12.)

een concerned with precise territorial delimitation, the nomads and
ranshumants of the region were concerned with the control of pastures, wells and
rade routes. Tribes often established patterns of collective security for
ollectively controlled tribal land and charged tolls for those wishing to cross it in
ecurity and safety[15].

3.15 Boundaries only acquired importance in the context of
rger political entities. Yet, even there, boundaries were only an administrative
onvenience and were subject to frequent change. Until the 19th Century at least,
pheres of different political authority in North Africa were usually separated by
order marches, rather than by precise boundaries. To the extent borders were
efined at all, it was normally on the basis natural features or of locally-
ecognised tribal boundaries.

3.16 These factors are of relevance in evaluating the rival claims
the European Powers, on the one hand, and of the Ottoman Empire, on the
her hand, during the colonial period. It was a bit naïve and certainly self-serving
the French to maintain that, because evidence of Ottoman sovereignty was
arse by European standards at the time, it did not exist - and to ignore the fact
at it had long pre-existed France's attempt at colonisation. At the time, only
arse control was necessary or possible in such a desert environment; but under
amic concepts of sovereignty and boundaries it was nonetheless a very real
sertion of sovereignty.

3.17 As will be seen, in 1890, when France's colony of Algeria
s recognised by Great Britain (and by Great Britain alone) to have a zone of
uence (or hinterland) as far south as Lake Chad, France had no basis at all for
such claim, not even a hinterland claim based on the geography. For Lake
ad lies directly south of Tripoli, not Algiers. In contrast, the Ottoman Empire
maintained over a long time the sort of control over the area that accorded
its desert topography and climate, as well as with Islamic concepts of
ereignty. When French military forces ultimately did reach the region of Lake
d in 1900, they came in very small numbers, and the subsequent military
ons involved only a few hundred military on either side. For the region could
support large military undertakings in colonial times. Manifestations of

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Ayache, G.: Les origines de la Guerre du Rif, Rabat, SMER, 1979, pp. 31-32.

military strength or of sovereignty were on a very small scale by European standards.

3.18 The French military forces that invaded the territories of the Senoussi tribes north of Lake Chad did not come as settlers. They were largely made up of Senegalese troops under the command of a few French officers. Their purpose was, by attacking the Senoussi tribes in the north, to secure the area in the south around Lake Chad and the Chari River, where the land was fertile and settlement was attractive. In this sense, the activities of the French in the Libya-Chad borderlands were quite different from French colonisation of regions of Africa further south, where they entered into agreements with the local rulers and then settled.

3.19 For the indigenous tribes led by the Senoussi, these regions had long been their home. They were nomads or semi-nomads to whom the desert and regions such as the Tibesti were a refuge. They accepted and cooperated with the Ottoman forces when they came into the area after 1906 to join forces against the common enemy, the infidel, who had destroyed the great Senoussi zawiya at Bir Alali[16] and were invading their lands. However, the Senoussi Order maintained a separate identity from the Ottomans and operated as an independent force allied with the Ottoman forces in their mutual objective to repel French advances.

SECTION 4. Important Physical Features Within the General Setting of the Dispute

3.20 Turning now from the broader geographical picture - the general African setting of the dispute and the special conditions of the desert environment - to a more specific focus, there are certain physical features of relevance. Earlier, in mentioning the topographical relief of this part of Africa (Maps Nos. 4 and 7), it was noted that two of the three Saharan massifs running northwest/southeast across North Africa lie within the General Setting: the Tibesti and the Ennedi massifs. These two features, and in fact the entire region of the General Setting, appear on the landform map of E. Raisz prepared in 1952, using a technique now in wide use for portraying with accuracy the topographic appearance and significance of features which, when shown by contour lines or by other traditional cartographic techniques, are difficult for the layman to interpret[17]. This map is reproduced here as Map No. 10.

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[16] See, paras. 4.103, et seq., and 4.126, et seq., below.

3.21 A more meaningful appreciation of the topography of the area is acquired if a look is taken as well at the underlying geological structures and their history. This can be done without getting involved in any profound geological analysis by referring to two maps prepared in 1968 by UNESCO as part of its Tectonic Map of Africa project[18]. The first of these maps, on a scale of 1: 15,000,000, has been reproduced here as Map No. 11. The second, on a larger scale of 1/ 5,000,000 (Map No. 12), covers roughly the same area as shown on the Raisz topographic map (Map No. 10). All three maps are usefully examined ogether.

3.22 Starting with the small-scale geological map (Map No. 11), it an be seen that the Tibesti massif lies directly south of the Gulf of Sirt on the ibyan coast. On each side of the massif are two large basins whose connection vith the Mediterranean to the north is very apparent on the map. The Tibesti, an levated area between the basins, is part of a high structure (what is commonly eferred to as the "Tibesti-Tripoli uplift") that runs north through the vicinity of ripoli and across the Mediterranean. The Mediterranean connection of these asins and of the Tibesti massif is clearly portrayed on the map.

3.23 South of the Tibesti (on the same map) appears another rge, irregularly-shaped basin, of which Lake Chad is a part, that descends into e Niger River basin and on southward to the Atlantic Ocean in the vicinity of ernando Po in the Gulf of Biafra. This southern basin is identified as the Cuvette de Bahr el Ghazal"[19] on the larger-scale geological map (Map No. 12); is identified as the "Bodélé Basin" on the topographic map (Map No. 10). This sin's Atlantic connection is clearly portrayed on these maps, and this accords th the geological history of the region: that a part of the Atlantic Ocean once

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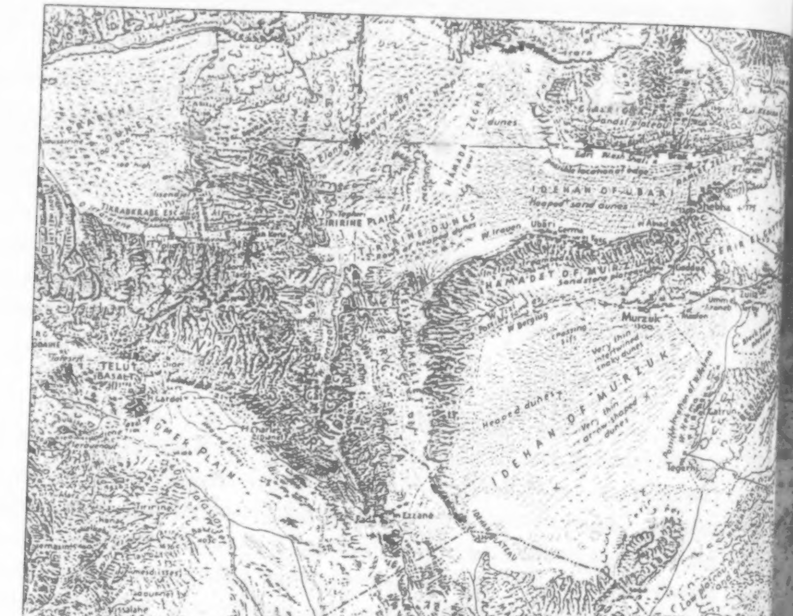
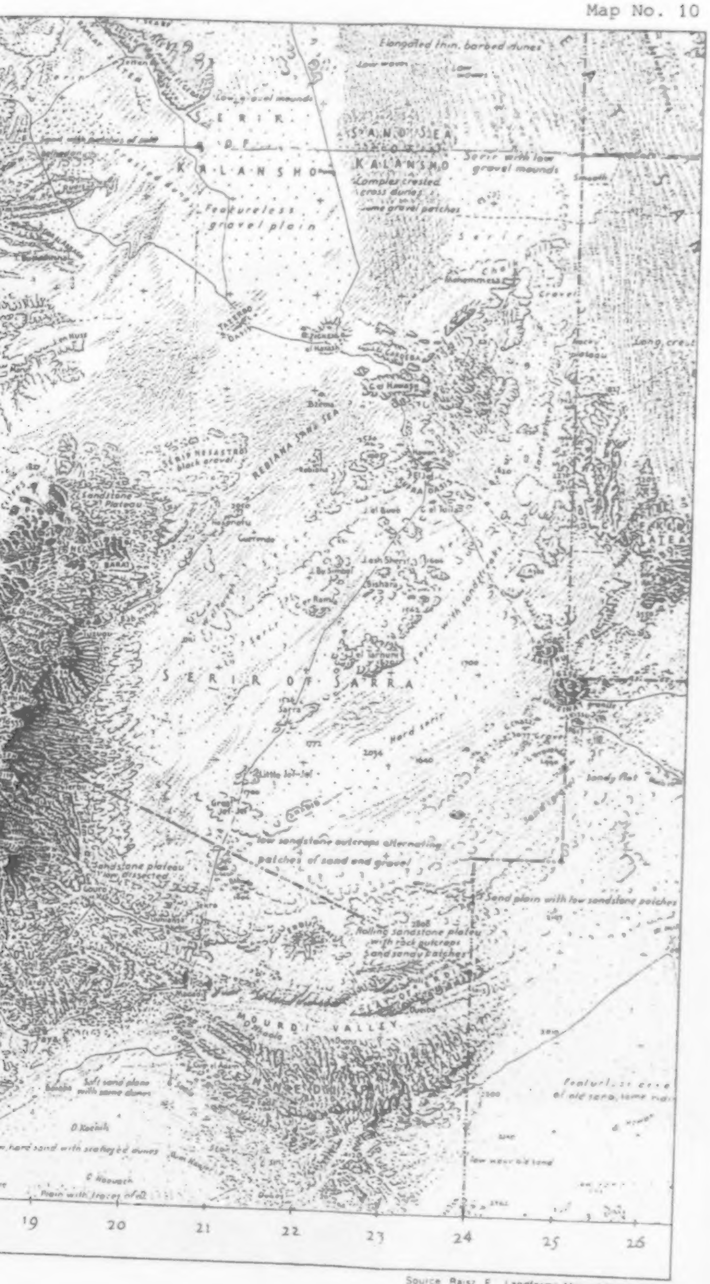
Raisz, E.: Landform Map of North Africa, Enviromental Protection Branch, Office of the Quartermaster Research, Washington, D.C., 1 sheet, 1952.

The legends accompanying these maps to explain the technical data on them have been placed in Exhibit 13.

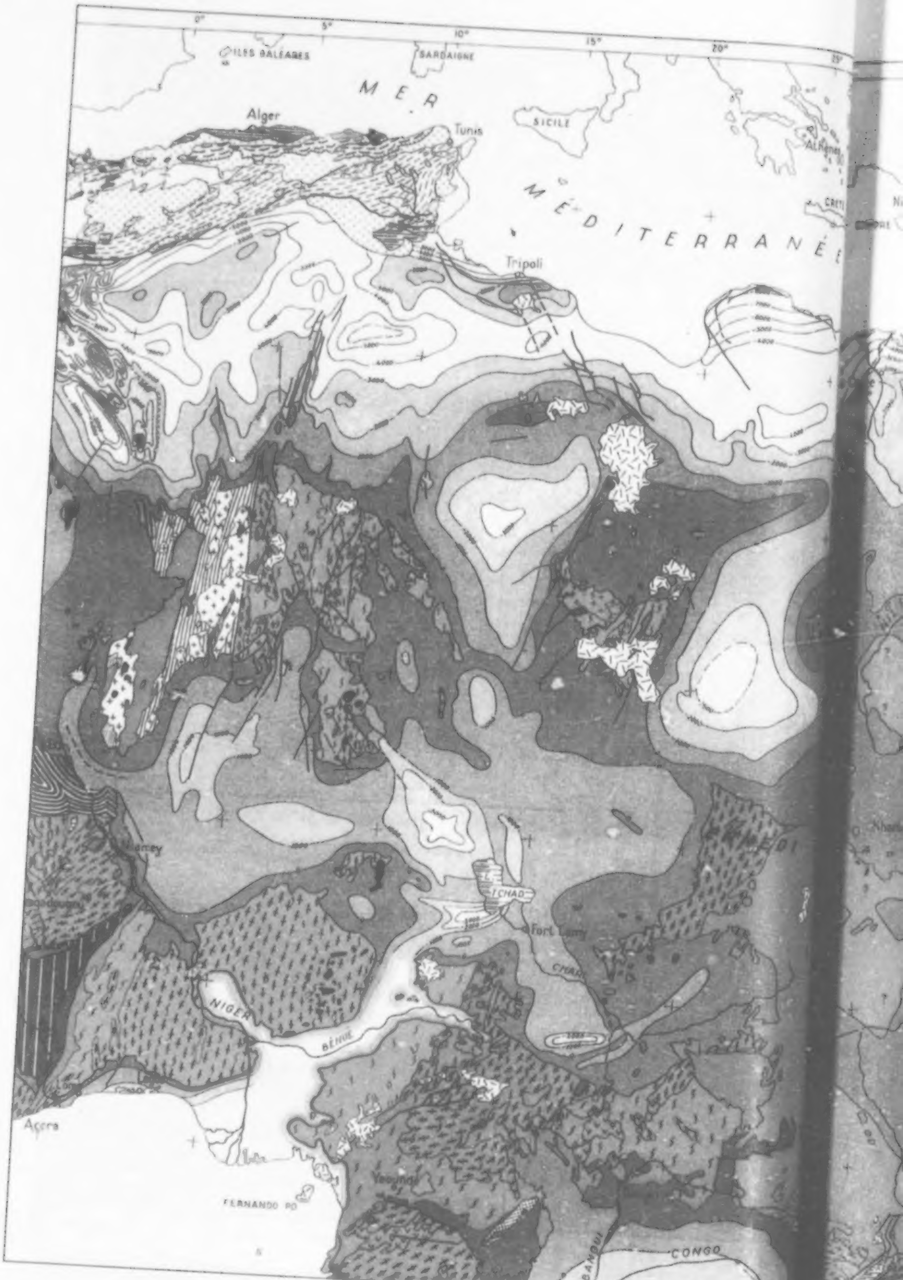
There is another area also known as the Bahr el Ghazal. It lies to the west of Fachoda (on the Nile at 10° N latidude), and enters the picture when the 1899 Anglo-French Declaration is discussed in Part V. See, for example, Map No. 42 appearing after para. 5.20, below.


IDEHAN OF UBARI
"Hooped" sand dunes
Ubari
Germa
TIRIRINE PLATE
HAMADET OF MURZUK
Sandstone plateau
Murzuk
IDEHAN OF MURZUK
Hooped dunes
Very thin grass-shaped dunes
TELUT BASALTS
Ezzane
Featureless plain
Tummo
Madama
"Ocean of stone", some sifs, gravel patches, many outcrops of bedrock
NORTHERN TENERE
Outcrops almost buried by sand
Few sifs
Kaouar Oasis
Bilma
Widely spaced sharp sifs
Low wavy sand
Sandst caps
Featured sifs over wavy base
Fachi
Arbri
Three sets of dunes
SOUTHERN TENERE
(Land of the Outside)
Patches of reg
AGADES
TENERE OF
Elongated sand waves
Patches of dunes
Featureless or old wavy sand
7
8
9
10
11
12
13
14
15

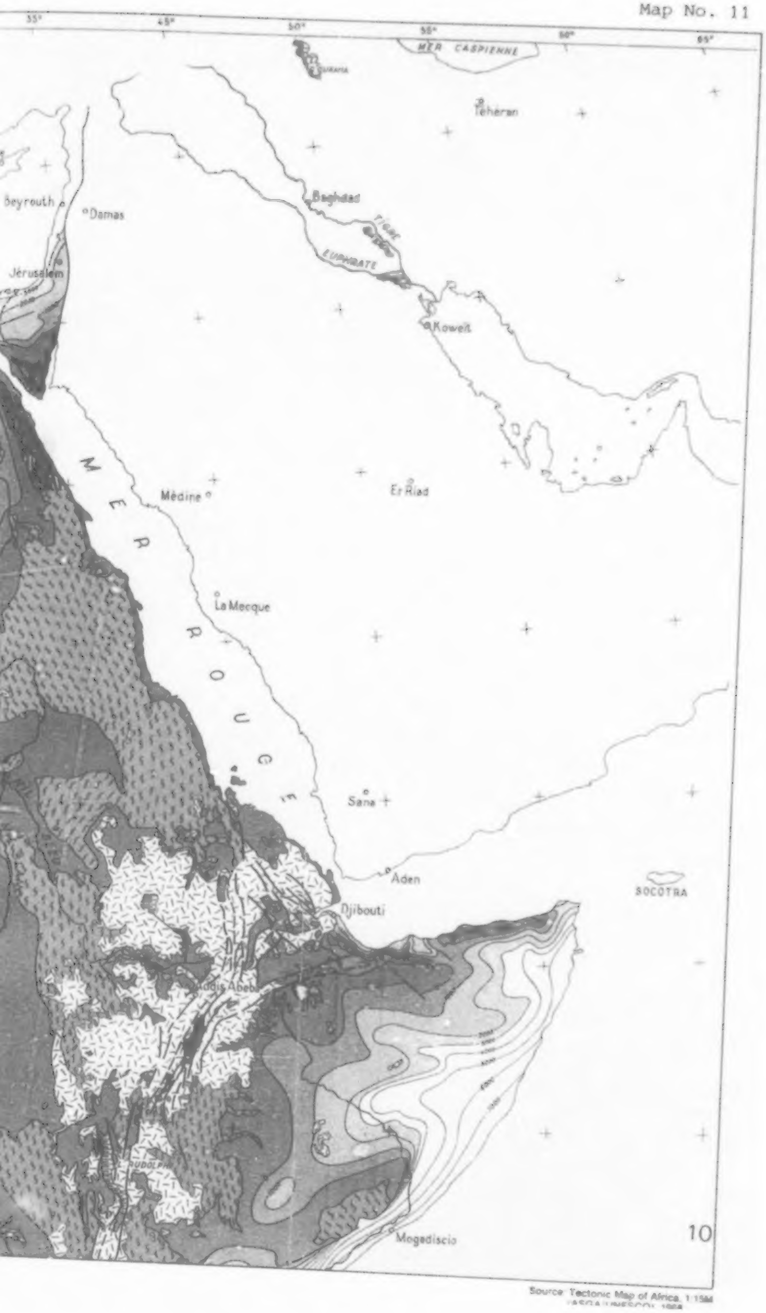
Map No. 10


Elongated lin. barbed dunes
Low mounds
Low gravel mounds
SERIR
SAND SEA
KALANSHO
Serir with low gravel mounds
Complex crested cross dunes
some gravel patches
Featureless gravel plain
Serir
Gravel
Long crest
black gravel
REBIANA SAND SEA
Sandstone Plateau
SERIR OF SARRA
Hard serir
Sandy flat
low sandstone outcrops alternating patches of sand and gravel
Sand plain with low sandstone patches
Sandstone plateau
Rolling sandstone plateau with rock outcrops Sand sandy patches
MOURDI VALLEY
Soft sand plain with some dunes
hard sand with scattered dunes
Plain with traces of
low wavy old sand
Featureless area of old sand
19
20
21
22
23
24
25
26

Source Raisz E. Landforms Map of North Africa
Cambridge, MA , 1952


0°
5°
10°
15°
20°
25°
ILES BALEARES
SARDAIGNE
MER
MÉDITERRANÉE
Alger
Tunis
SICILE
Tripoli
CRETE
Athènes
Niamey
TCHAD
Fort Lamy
CHARI
NIGER
BÉNOUÉ
Accra
FERNANDO PO
Yaoundé
OUBANGUI
CONGO

Map No. 11



Source: Tectonic Map of Africa, 1:15M
(ASGA/UNESCO), 1968

Oued
B
L
D E

Map No. 12

Source: Tectonic Map of Africa, 1:5M, sheet 2 (UNESCO 1968).

extended from the Gulf of Biafra northward into what is now southern and central Chad. This marine transgression from the south contrasts with the geological history of the area north of the Tibesti massif: there, a marine transgression from the Mediterranean sea extended as far south as the Tibesti, confirming that region's connection with the Mediterranean.

3.24 This is not merely a ritual reference to the region's geological past. For the geological and geographical north/south division that occurs here has affected the climate, the economy, the ethnic composition and the political life of this part of Africa.

3.25 A related geographical feature, the importance of which is confirmed by geology, is shown on all three maps. It is the structural connection between the Tibesti massif and the Ennedi massif. On the smaller-scale geological map (Map No. 11) it is shown by the brown-coloured zone running south and then almost east from the Tibesti massif to the Ennedi massif. This connection is shown with even greater clarity on the larger-scale geological map (Map No. 12), where it is portrayed by an arc, shaded light red, that starts to the northeast of Emi Koussi, descending south along the fringe of the "Bassin de Kufra" and then east along the Bassin's southern edge, where it crosses Ennedi and the Dépression de Mourdi. This structural connection reflects a basic separation between: (i) the Tibesti massif and the Libyan basins on its north, east and west; and (ii) the Bodélé Basin to the massif's south.

3.26 Thus, geology confirms (and even explains) what the present-day topography shows (Map No. 10). The two Libyan basins appear on the topographic map on either side of the Tibesti massif as the "Serir of Tibesti" and the "Serir of Sarra"; to the north is what Map No. 12 calls the "Bassin de Syrte". These are mainly surfaces of gravelly desert bed (marked "serir") overlying the geological basins[20]. The peak, Emi Koussi, and the ridge running southeastward from it to the Ennedi massif are easily spotted. To the north of the "Ennedi Plateau" is a feature that runs parallel to the Plateau, the "Mourdi Valley" or Mourdi Depression, which extends east/west for some 300 kilometres. The large-scale geological map (Map No. 12) shows this feature ("Dépression de Mourdi") to be part of the structural connection between the Ennedi and the Tibesti massifs.

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[20] The international boundary drawn on the topographical map appears to coincide with the line agreed in the 1935 Treaty of Rome. See, para. 5.326, et seq.,below.

3.27 This structural and topographical ridge between the two *massifs* in the eastern sector of the General Setting is located in the vicinity of 18°N latitude. It is evidence of the fact that there is clear geological and geographical separation between an area linked northward to the Mediterranean and an area linked southward to the Atlantic, and that the Tibesti and the basins surrounding it on the north, east and west have a clear Mediterranean connection. This separation will be referred to here as the "Tibesti-Ennedi Divide". This Divide is illustrated on another geological map with particular clarity, Map No. 13, a reproduction of a part of the International Geological Map of Africa[21].

3.28 As to the Tibesti *massif*, it is a highly complex unusually-shaped feature. It rises to over 3,000 metres from a plateau of about 750 metres, and is made up of peaks, craters and deeply eroded valleys. Being volcanic in origin, there is no one trend to the mountainous structure. On the east, it has a north/south spur. On the south, it has a spur running northwest/southeast. The focal point of the *massif* is Emi Koussi at its southwest corner. The watersheds of the *massif* are illustrated on Map No. 14, where they can be seen generally to follow the crests of the peaks of each spur.

SECTION 5. Climate

3.29 The climatic division that cuts across the middle of Chad has been touched on above and illustrated on Map No. 8 appearing there[22]. The maps depicting comparative east/west zones of rainfall, types of vegetation, and types of dunes all show that a desert climate exists south of Libya's coast to about 15°-16°N latitude. At this point a change occurs. The climate starts to shift from a desert type to a Sahel or Savanna type of climate - a transition stage between the deserts of the north and the tropics of the south. This change begins to occur north of Lake Chad at a latitude that almost divides Chad into two equal parts.

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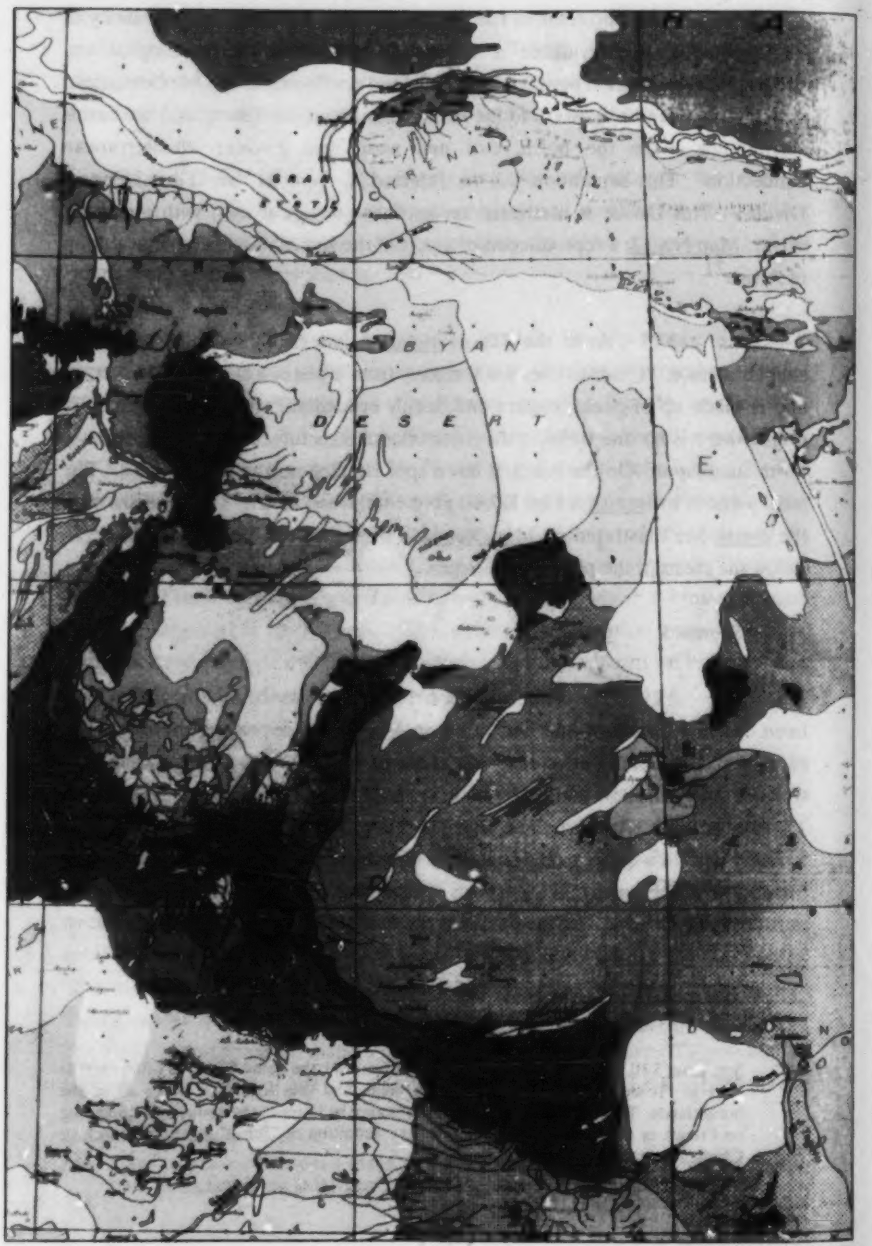
[21] Scale: 1:7.5 million, Sheet 2, 1963.

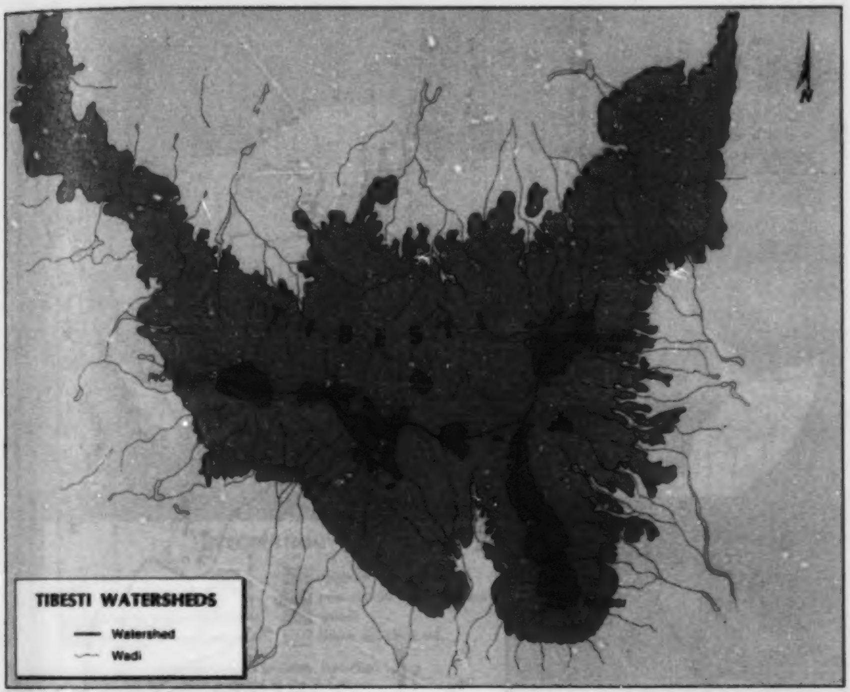
[22] *See*, para. 3.10, above. In the course of this Memorial, the name "Chad" is often used to refer to "Tchad" as it appears on French maps, and thus includes part or all of the borderlands. This, of course, implies no acceptance by Libya of the boundaries appearing on French or other maps used here or of the definition of "Tchad" from the French or Chadian viewpoint.

Map No. 13



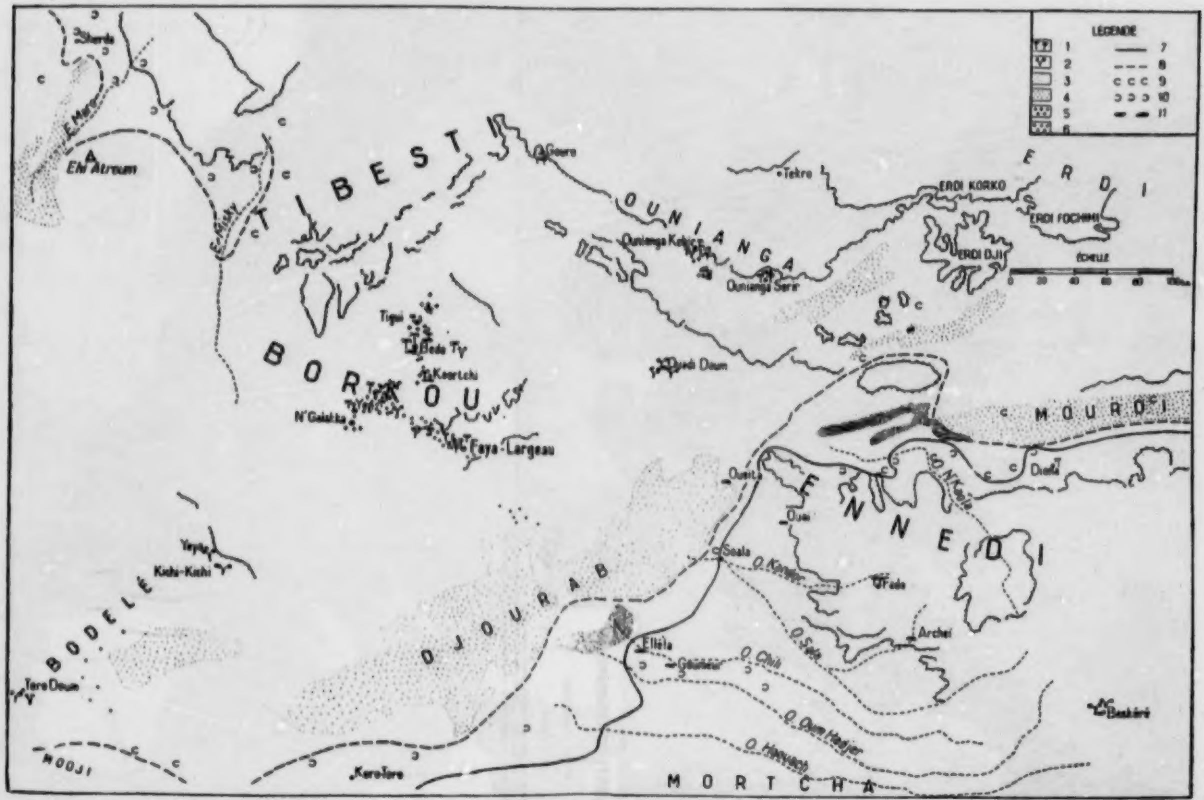
Source: International Geological Map of Africa.
Sheet #2, 1963. Scale 1:7,500,000

Map No. 14



Specially prepared for presentation to the International Court of Justice

Map No. 15

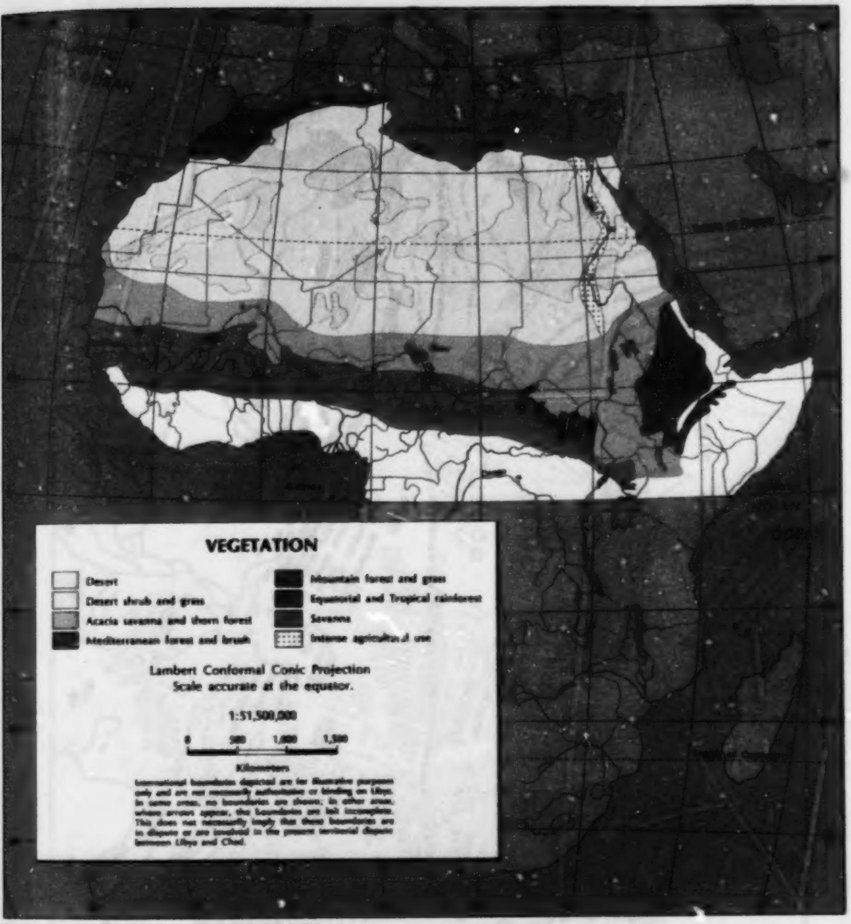


Source : Capot-Rey, Robert. Borkou et Ounianga. Etude de Géographie Régionale, 1961.

FIG. 26. — Carte de la végétation du Borkou et de l'Ounianga.

1) Palmiers dattiers. 2) Palmiers doum. 3) Erg vêtu. 4) Erg vif. 5) Pseudo-steppe à *Sporobolus*. 6) Prairie hygrophile à flore résiduelle. 7) Limite nord de la zone sahélienne. 8) Limite nord de la zone sahéro-sahélienne. 9) Station du *Cornulaca monacantha*. 10) Station du *Cenchrus biflorus*. 11) Mare permanente.

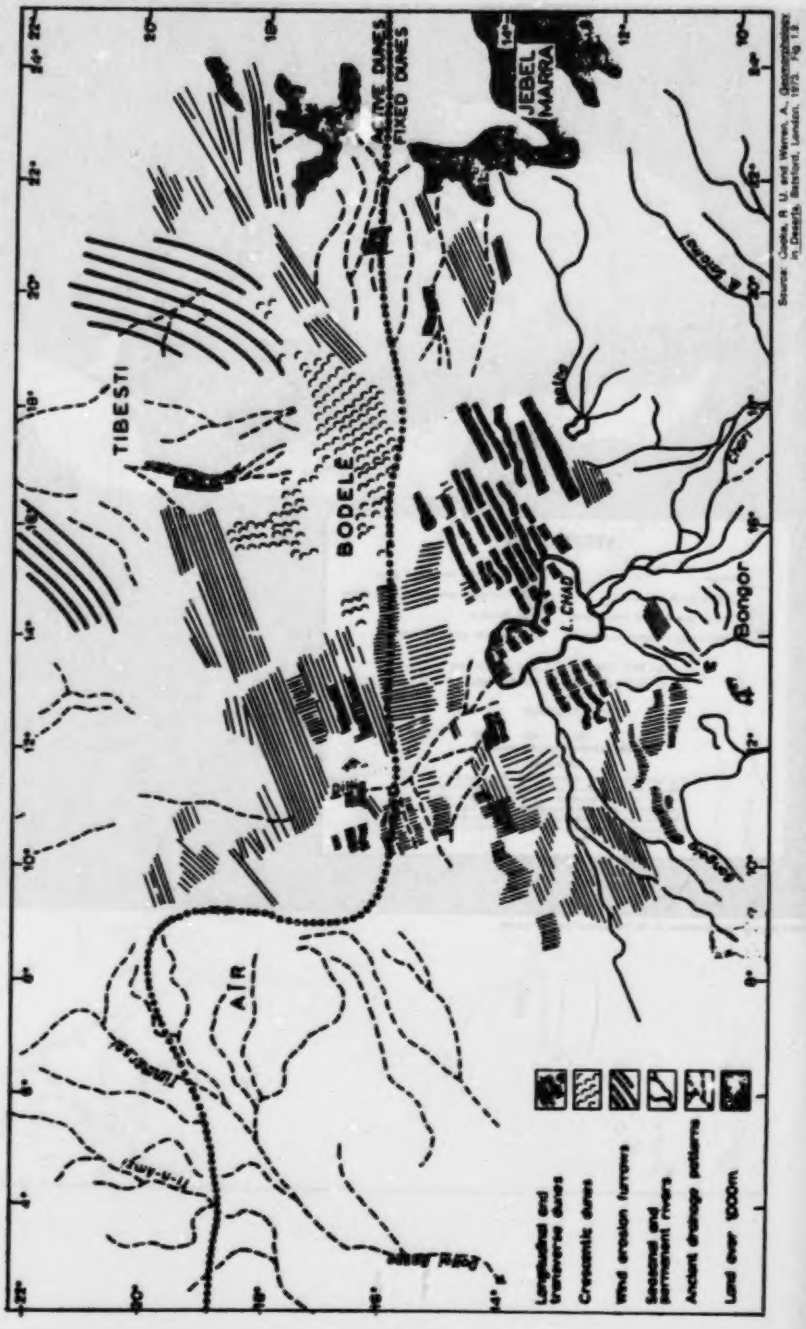
Map No. 16


VEGETATION
Desert
Desert shrub and grass
Acacia savanna and thorn forest
Mediterranean forest and brush
Mountain forest and grass
Equatorial and Tropical rainforest
Savanna
Intense agricultural use
Lambert Conformal Conic Projection
Scale accurate at the equator.
1:51,500,000
0
500
1,000
1,500
Kilometers

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

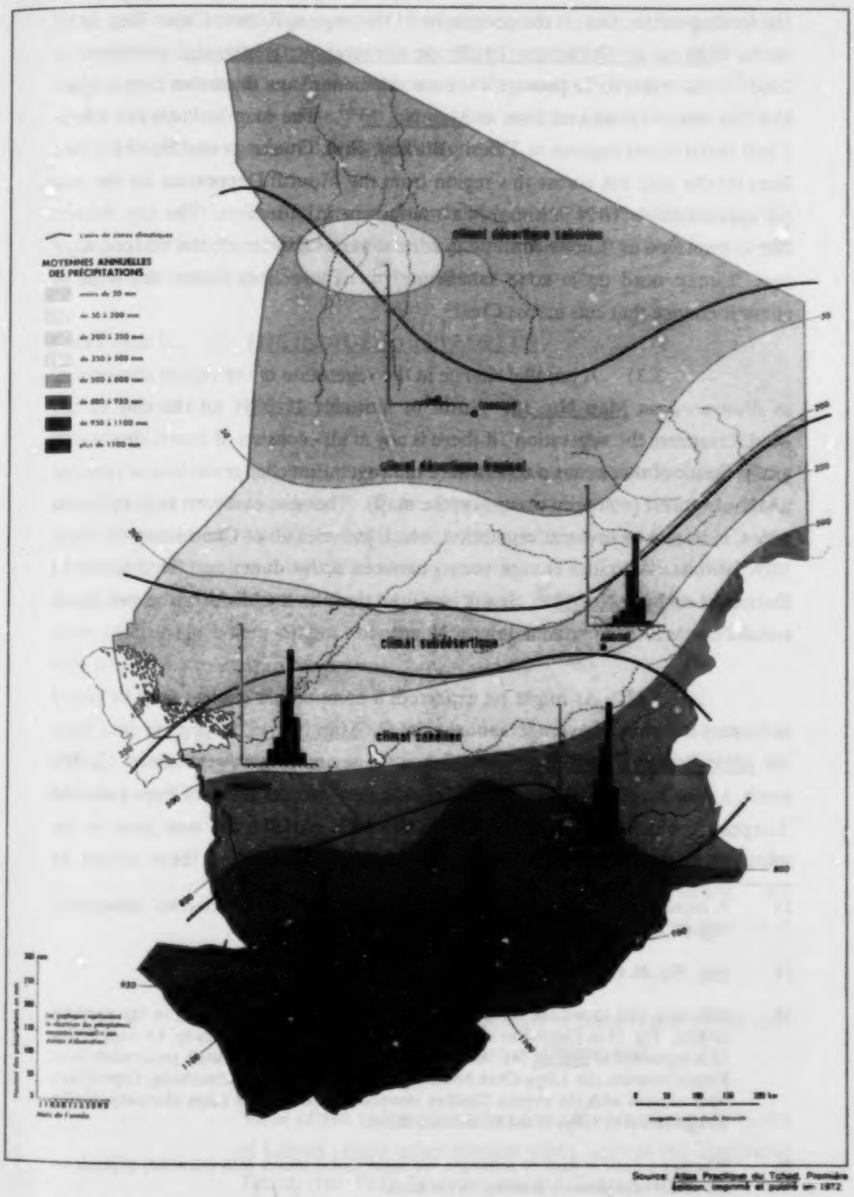
Specially prepared for presentation to the International Court of Justice.

Map No. 17



Source: Cooke, R. U. and Warren, A., Geomorphology in Deserts, Batsford, London, 1973. Fig 1.2

Map No. 18



Source: Atlas Pratique du Tchad, Première Edition, imprimé et publié en 1972.

3.30 This climatic change is discussed and illustrated by one of the leading authorities on the geography of this region, Robert Capot-Rey, in his book, Borkou et Ounianga: Etude de Géographie Régionale, published in 1961[23]. He refers to "le passage à la zone sahélienne" and illustrates it on a figure that has been reproduced here as Map No. 15[24]. The map includes the Libya-Chad borderlands regions of Tibesti, Borkou, Erdi, Ounianga and Ennedi. Two lines on the map cut across this region from the Mourdi Depression on the east (at approximately 18°N latitude) in a southwestward direction. The top, dashed line is identified as "Limite nord de la zone saharo-sahélienne"; the bottom, solid line: "Limite nord de la zone sahélienne"[25]. These lines locate the zone of climatic change that cuts across Chad.

3.31 A parallel change in the vegetation of the region also occurs, as illustrated on Map No. 16. North of latitudes 15-16°N all the way to the Mediterranean, the vegetation - if there is any at all - consists of desert shrubs and grass. South of there runs a zone where the vegetation changes to acacia savanna and thorn forest (coloured orange on the map). The next east/west belt, coloured green, is a zone of savanna vegetation, which includes all of Chad south of about 12°N latitude. A similar change occurs between active dunes and fixed dunes, as illustrated on Map No. 17[26]. It will be noted that the line dividing the two zones crosses east/west at approximately 16°N latitude.

3.32 As might be expected, a comparable change may be found in respect to zones of average annual rainfall. Map No. 18, relying on data from the Atlas Pratique du Tchad (1972), shows a series of east/west zones. In the north, a zone labelled "climat désertique saharien" crosses north of Faya (marked "Largeau"), which lies approximately on the 18°N parallel; the next zone to the south is characterized by a "climat désertique tropical"; then there occurs an east/west zone, between roughly 15°N and 12°N, marked "climat subdésertique". The next two zones are marked "climat sahélien" and "climat tropical", respectively. It is within these last two zones that the most fertile part of Chad lies and its main industries, economic activities and its capital, N'Djamena (identified on the map by its French name, Fort Lamy), are located. This is the part of Chad that the French have referred to as "le Tchad utile".

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[23] A monograph prepared under the auspices of the Institut de Recherches Sahariennes, Algiers, Université d'Alger, 1961.

[24] Ibid., Fig. 26, after p. 66.

[25] This map also shows the same Tibesti-Ennedi connection referred to in the previous section. Fig. 15 in Capot-Rey's book shows this connection geologically. (A copy of Fig. 15 is contained in Exhibit 14). As in the case of many of the maps used, particularly from French sources, the Libya-Chad boundary shown on the maps illustrating Capot-Rey's book accords with the French-Chadian viewpoint. Use of these maps obviously implies no agreement by Libya to the boundaries shown.

[26] Whether a dune is fixed or active (in the sense that it moves with the wind) depends on the extent of vegetation growing on the dune.

3.33 Thus, climatic data reveals that in the vicinity of 15°N latitude the climate, rainfall, vegetation and dunes change from the desert types of the north to the Sahel-Savanna environment of the south.

CHAPTER II. THE INDIGENOUS PEOPLES

SECTION 1. Introduction

3.34 It is easy to become submerged in the detail of the ethnic mix of people to be found today in the area embraced by the General Setting without considering whether it has a real bearing on the present case. To the ethnologist, the subject is full of fascinating questions. The Toubou of the Libya-Chad borderlands and particularly of Tibesti have been a favourite subject of these studies, since their origins are obscure and much debated. Most of this has little or nothing to do with the present case, however.

3.35 Nevertheless, there are certain basic conclusions that emerge from the welter of detail, which are of relevance. These include the following:

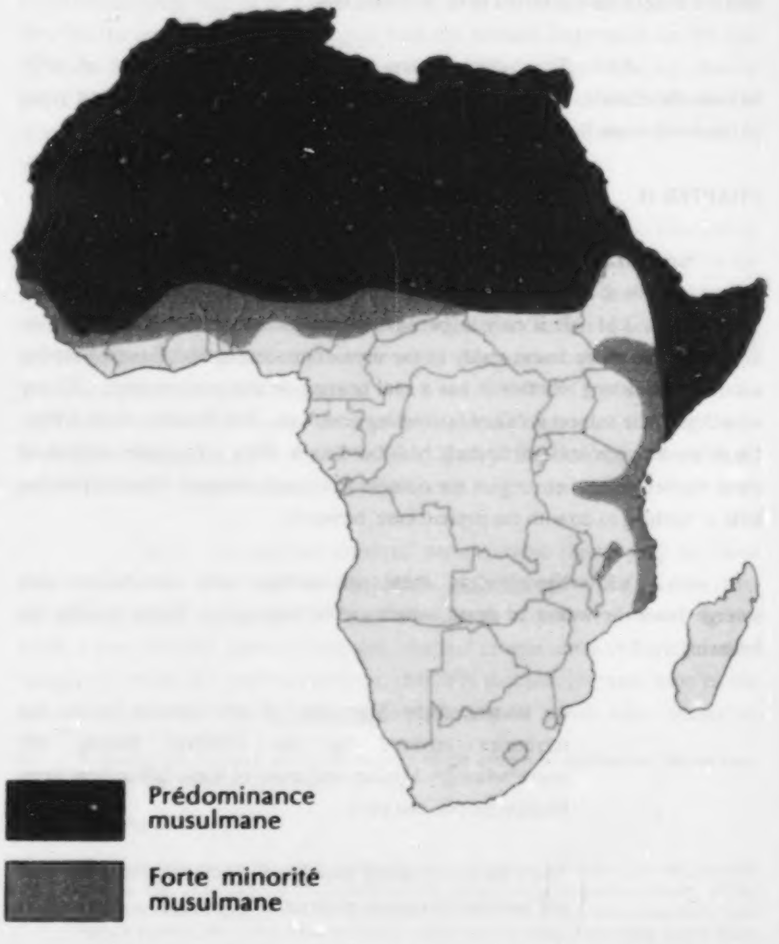
- As illustrated by Map No. 19, the people within the territories covered by the General Setting are overwhelmingly Muslim and some of these tribes have been Muslim far into the past.

- The area is very thinly populated in comparison to the part of Chad that lies south of about 15°N latitude.

- Some of the indigenous tribes and tribal confederations are of Libyan origin; other Muslim tribes, such as the Toubou of Tibesti (the Teda Toubou) and the Tuareg, with an ancient

Map No. 1

RÉGION D'ISLAM ET RÉGIONS CHRÉTIENNES

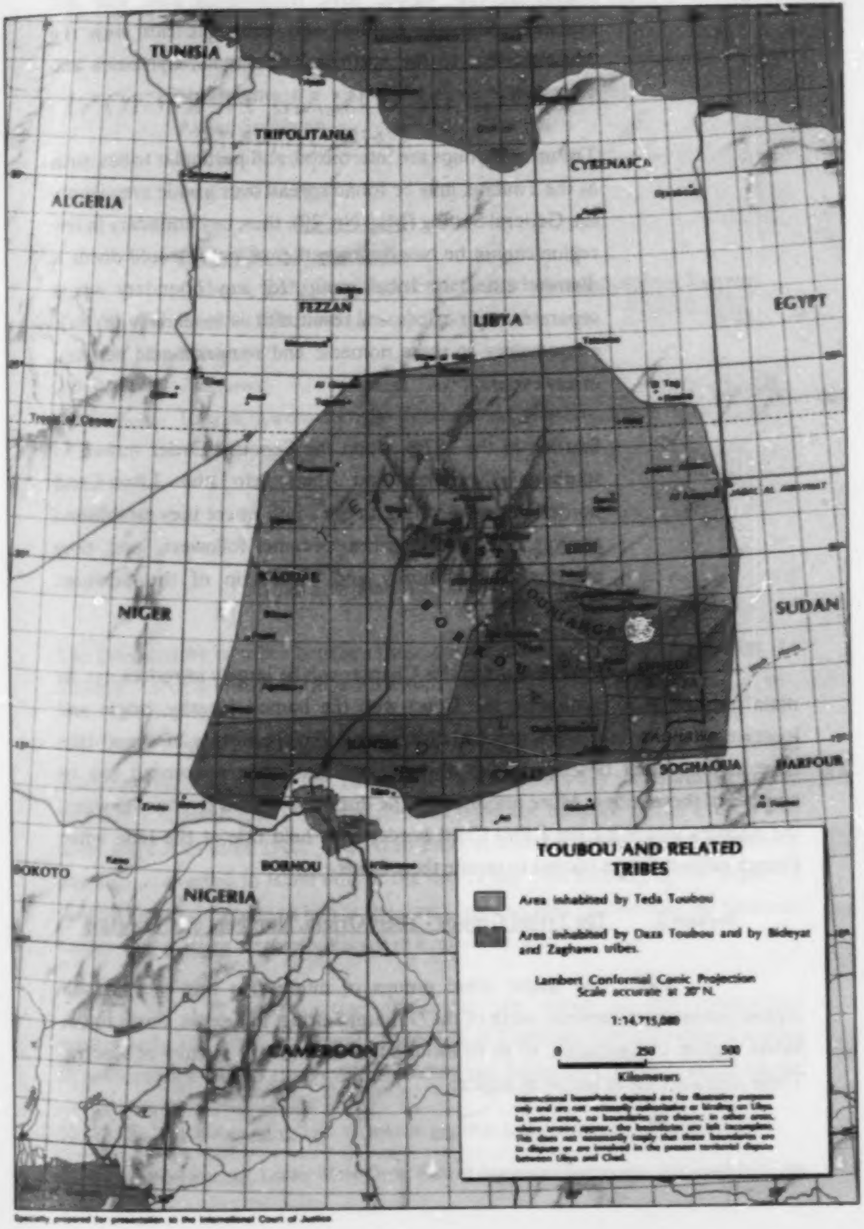


▇ **Prédominance musulmane**

▨ **Forte minorité musulmane**

Source: Atlas Historique de L'Afrique,
Les éditions du Jaguar, © 1988, p.

Map No. 20


TUNISIA
TRIPOLITANIA
CYRENAICA
ALGERIA
FEZZAN
LIBYA
EGYPT
Tropic of Cancer
JABAL AL AWAYNAT
EDDI
KAOUAR
NIGER
BORKOU
OUNIANGA
SUDAN
KANEM
SOGHAOUA
DARFOUR
SOKOTO
BORNOU
NIGERIA
CAMEROON
TOUBOU AND RELATED TRIBES
Area inhabited by Teda Toubou
Area inhabited by Daza Toubou and by Bideyat and Zaghawa tribes.
Lambert Conformal Conic Projection
Scale accurate at 20°N.
1:14,715,000
0
250
500
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where portions appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

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history in the region, have traditionally had and still maintain religious, cultural and economic ties with the Muslim tribes to the north in Tripolitania, Cyrenaica and Fezzan.

- The ethnic groups are intermixed, and particular tribes, such as the Toubou, may be found spread over a wide area within the General Setting (Map No. 20); thus, any boundary in this region cannot be based on whether or not it would divide a discrete ethnic or tribal group, for any boundary would separate major tribes - a result that is essentially of little consequence to these nomadic and semi-nomadic peoples, in any event.

- Starting in the 1870s, when the Senoussi Order moved to southern Cyrenaica and then into the Libya-Chad borderlands and further to the south where they established zawiyas, the major tribes became followers, and they accepted the authority and leadership of the Senoussi Order.

3.36 What follows in this Chapter will be largely introductory: its main purpose is to familiarize the Court with the names, identity, origin and location of the various tribal groups before going into the history of events that have an important bearing on the dispute, and that often concerned one or another of these tribes. More importantly, the dispute concerns territory to which the peoples inhabiting the Libya-Chad borderlands held title at the time when French military forces started to invade these lands.

SECTION 2. The Tribal Groups - Their Origin, Numbers and Location

3.37 The major tribal groups of interest to this case inhabit regions extending somewhat north of the General Setting: in Fezzan, north to the Sebha region; in Cyrenaica, so as to include the oases in the vicinity of Koufra. These tribes are listed below by region:

Fezzan	**Cyrenaica** (Region of Koufra)
Magharba	Zuwaya
Mahamed	Mijabra
Hausauna	Toubou (Teda)
Awlad Sulaiman	Tuareg
Toubou (Teda)	Magharba
Azghar Tuareg	

Libya-Chad Borderlands

(Tibesti, Erdi, Ounianga, Ennedi, Borkou and northern Kanem)

Toubou (Teda and Daza)

Bideyat

Zaghawa

Libyan merchants from Fezzan and Cyrenaica, made up of[27]:

- Zuwaya
- Mijabra
- Warfella
- Qadhadfa[28]
- Hsoun
- Magharba
- Awlad Sulaiman (in Kanem).

The intermixture of tribes between these areas is apparent from the above list. In addition, there is much intermixture within the areas.

3.38 The nomadic tribes of special relevance are the Awlad Sulaiman, the Tuareg and the Toubou; for it was principally these tribes that the Senoussi coalesced into a fighting force to resist the advance of the French into these territories after 1902. The Arab Bideyat and Zaghawa tribes (of Ennedi), although converted to Islam only at the end of the 19th Century by the Sultan of Ouadaï (and submitting to him at the time), also became followers of the Senoussi Order, and *zawiyas* were established in Ennedi, as well.

3.39 As to the origins of the tribes in the Libya-Chad borderlands, the Toubou, Tuareg, Bideyat and Zaghawa have an ancient history of settlement in the region, even predating the Arabs that came south from the

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[27] *See*, Capot-Rey, *op. cit.*, pp. 91 and 155; *see*, also, *La Documentation Francaise*, 1953.

[28] Colonel Kadhafi, Leader of the Great First of September Revolution, is a member of this tribe.

Mediterranean area over the past thousand years (the Libyan Arabs) and from the Arabian peninsula (the Mahamed). Other Libyan tribes, such as the Awlad Sulaiman in Borkou and Kanem, arrived in more recent times. The Awlad Sulaiman had been forced out of Fezzan in the 1840s by the Ottomans, who had taken over from the Karamanli in Tripoli, and they moved south into the borderlands region[29]. The Libyan merchants to be found in substantial numbers in Faya (Borkou) and in the "Fezzanese" quarter of Abéché came from Fezzan and Cyrenaica at the time the Senoussi Order moved its principal centre south into the area and established zawiyas in the borderlands regions.

3.40 A few paragraphs about the Toubou tribes are appropriate here since, although a good deal has been written about them, confusion exists over the location and size of the various Toubou tribes as a result of the diversity of methods of classification and the profusion of the names used to identify them. In this Memorial, the classifications used by the French authority Chapelle will generally be used[30]. He divided the Toubou[31] into the Teda Toubou and the Daza Toubou; and he associated with the Toubou the Bideyat and Zaghawa tribes. Map No. 20, using data from a map in Chapelle's 1982 book[32], shows the areas where each of these groups may be found:

- The Teda (or Teda-Tou) Toubou, centered in Tibesti - their historic homeland - inhabit areas as far north as Al Qatrun (Gatroun) in Fezzan and the Koufra oases of southern Cyrenaica, and as far south and west as Borkou, Kanem and Kaouar (now part of Niger);

- The Daza Toubou inhabit areas of Ennedi and Ounianga, as well as eastern Borkou and Kanem;

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[29] See, para. 4.84, et seq., below for a fuller account of the history of this tribe.

[30] See, Chapelle, J.: Nomades noirs du Sahara: les toubous, Paris, L'Harmattan, 1982. See, also, La Documentation Française, 1953.

[31] In the Teda Toubou dialect, "tou" means "rocky place" and "bou" means person. Thus, "Toubou" means the inhabitants of a rocky place, an apt name for the Teda Toubou, who inhabit the Tibesti. See, Cline, W.: The Teda of Tibesti, Borkou and Kawar in the Eastern Sahara, published by G. Banta of Menasha, Wisconsin, 1950, p. 11; see, also, Fuchs, P.: Die Völker des Sudöst Sahara, Vienna, Walhelm Braumüller, 1961, p. 6.

[32] Chapelle, op. cit.

- South of the Daza Toubou, in Ennedi, are the homelands of the Bideyat and Zaghawa extending to just south of 15°N latitude.

3.41 The Toubou are among the last remnants of the three original Saharan populations (the other two being the Tuareg and the Moors). In the 14th Century, the Awlad Muhammad, a Moroccan maraboutic dynasty, wrested control away from the Toubou of a number of oases in Fezzan[33]. During the 18th Century, the Karamanli in Tripoli organized expeditions to recover control of Fezzan; and Toubou raiding parties into Fezzan were forced back by the Karamanli, who in turn were repulsed by the Toubou when the Karamanli forces attempted to occupy Tibesti in 1805.

3.42 Turning next to the population of the various regions and the population distribution of the indigenous tribes, it is not necessary to go into much detail. The general population levels of Fezzan, the Koufra region of Cyrenaica and the Libya-Chad borderlands have been the following:

Fezzan		**Koufra Region** (Cyrenaica)	
1917[34]:	45,300 (11,500 nomads)	1917[35]:	3,700 (1,200 nomads)
1954:	59,313	1951[36]:	12,466
1964[37]:	79,329 (8,100 nomads)		
1973[38]:	110,318 (56% resulting from in-migration)		

Libya-Chad Borderlands (excluding Kanem)

1953[39]: 41,100 (33, 900 nomads)

---

[33] Ibid., p. 59.

[34] De Agostini, E.: Le Popolazioni della Tripolitania, Tripoli, 1917, p. 364. (A copy of this page is attached as Exhibit 15.)

[35] De Agostini, E.: Le Popolazioni della Cirenaica, Benghazi, 1922-1923. (A copy of each of the relevant pages is attached as Exhibit 15).

[36] Allan, J.A.: Libya, the Experience of Oil, London, Croom Helm, 1981, p. 55.

[37] Alawar, M.: "Urbanization in Libya - Present State and Future Prospects", Social and Economic Development of Libya, Joffe, E.G.H. and McLachlan, K.S., Middle East and North African Studies Press Ltd., 1982, p. 95.

[38] Ibid.

[39] La Documentation Française, 1953.

The Teda Toubou population in the southern regions of Fezzan and Cyrenaica in the 1950s has been estimated at 1,200 (700 south of Al Qatrum and 500 around Koufra and its surrounding oases)[40]. Many more Toubou have moved into Libya since then as a result of the civil war in Chad. The relative thinness of the population of these borderlands regions in contrast to the regions just to their south is brought out by the following 1953 estimates for the latter regions[41]:

Baguirmi (Batha)	335,667 (91, 896 nomads)
Kanem	124,967 (58,416 nomads)
Ouadaï	466,528 (104,383 nomads)
Total	927,162

Thus, the population of the borderlands north of approximately 15°N latitude compared to the population of the regions (including all of Kanem) just to the south of that line stands in the ratio of 41,100: 927,162; and the southern regions listed do not include the most southerly regions of Chad, in the area of the Chari River, which are heavily populated compared to the borderlands and to Fezzan and southern Cyrenaica[42].

3.43 As to the Teda Toubou population of the Tibesti, it is estimated at between 6,000 and 8,000, a figure which has remained relatively static. According to Capot-Rey, in 1960 two-thirds were either nomad or semi-nomad, meaning they had no fixed abode[43]. Thus, it can be seen that the estimated Teda Toubou population in southern Fezzan and in the area of Koufra of 1,200 is not negligible when considered alongside that of the small Teda Toubou population of Tibesti of only 8,000. The Teda-Toubou depend largely on camel and goat herding and, between periods of transhumance, on garden produce and small quantities of cereals and dates. They also engage in long-distance trade: with Fezzan from the northern part of Tibesti; with Koufra from the eastern part; and with Kaouar or Djado from the western part of Tibesti.

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[40] Dupree, L.: "The Non-Arab Ethnic Group of Libya", Middle East Journal, 1958, Winter, p. 12.

[41] La Documentation Française, 1953.

[42] Le Rouvreur, A.: Sahéliens et Sahariens du Tchad, Paris, L'Harmattan, 1989.

[43] Capot-Rey, R.: "Le nomadisme des Toubous", in UNESCO study: Nomades et Nomadisme au Sahara, 1963.

Such trading patterns bring butter, salt, cereals and manufactured goods into the region. The Teda Toubou traditionally have had no long-distance commercial relations with Chad; such relations have been with Libya and Niger[44].

SECTION 3. Senoussi Authority and Leadership in the Libya-Chad Borderlands

3.44 The Senoussi have already been discussed above. In this Section, the activities of the Senoussi will be described more fully, including the spread of Senoussi authority into the borderlands and their relationship with the indigenous tribes.

(a) The Role of the Zawiya as an Instrument of Senoussi Authority

3.45 The founder of the Senoussi Order, the Grand Senoussi, was born in Algeria and continued his religious studies and teaching in Morocco and in Mecca. In 1843, he established Libya's first zawiya, or lodge, at al-Baida in the Jebel Akhdar (the "Green Mountains") near the Mediterranean coast in eastern Cyrenaica.

3.46 Zawiyas have been well described by several authorities. For example, John Wright has referred to them as-

> "... lodges built at tribal centres, or at watering places and junctions on the trade and pilgrim routes, (which) served as monasteries, schools, hostels, sources of advice and mediation and, in due course, as administrative centres[45]."

Another description, set out in a note for the British Foreign Office, dated September 1918, prepared by a British authority then posted to Cairo, M.S. MacDonnell, is this:

> "A kind of monastery, usually built in the most fertile spot on a trade route, containing school, rest-room for travellers, living accommodation for the sheikh and his family, a mosque, water

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[44] See, generally, Chapelle, op. cit.

[45] Wright, J.: Libya, Chad and the Central Sahara, London, Hurst & Company, 1989, p. 84. (A copy of this page is attached at Exhibit 16.)

> supply, and a walled-in enclosure for protection of the animals and personal belongings of travellers[46]."

In a recent book by a French historian, zawiyas are given this description:

> "Les zâwiya, qui sont autant de points d'appui fixes de la confrérie, sont de véritables centres urbains où s'organisent les études, l'accueil des commerçants et des courriers, et la mise en exploitation par les esclaves des terres cultivables environnantes. Certaines de ces zâwiya - deux d'entre elles au moins au Tchad - sont devenues des places fortes pour faire face à la menace extérieure[47]."

3.47 The role of the zawiya in carrying out the mission of the Senoussi was set out in the note of M.S. MacDonnell to the British Foreign Office, referred to above. In this note, he made the point that:

> "A reformer of the Mohammadan religion must be prepared to assume the reins of temporal power to carry through his reforms. 'In Islam rule and religion go together'."

The note goes on to describe the zawiya founded in the oasis of Djaraboub in 1856 as the "mother" zawiya[48]. In the organization of the Senoussi Order, the Head of the Order was "absolute in spiritual matters and in all concerns of the brotherhood". He made known his wishes through the "Moquaddamms" or notables, who were appointed leaders of sub-divisions-

> "... who in turn were assisted by the Sheikhs of Zawias to promote the policy of the leader, spread the teaching, collect the dues and foster the trade and industry of the adherents, while acting at the same time as legislators, judges and referees on all matters[49]."

---

[46] "Note on the Political Situation in Tripoli and Cyrenaica", M.S. MacDonnell, Cairo, FO 371/3805, September 1918, p. 1. MacDonnell also added that:

> "Education also was not neglected. Each Zawia contained a school where the children of the followers could be educated and furnish a supply of tu'aba, or students, who were destined for the entourage of the Mahdi or as missionaries to distant lands."

Ibid., p. 3. British Archives Annex, p. 126.

[47] Triaud, J.L.: Tchad 1900-1902: Une guerre franco-libyenne oubliée, Paris, L'Harmattan, 1987, pp. 16-17. (A copy of these pages is attached at Exhibit 17.)

[48] See, para. 3.51, and Map No. 21, below. Djaraboub is in the Libyan desert near the eastern boundary of Libya with Egypt.

[49] Note of MacDonnell, op. cit., p. 2, British Archives Annex, p. 127.

3.48 The same note then describes what was involved in governing nomad tribes and how the Senoussi performed this function through their zawiyas:

> "A nomad people has three main preoccupations: firstly, security for itself and its belongings; secondly, a sufficiency of food and water for itself, its flocks and herds; and thirdly, but more rarely, facilities for trade.
>
> The leader of the Senoussi Confraternity seems to have realized the potentialities for power in one who could so organize his Order as to give it the greatest influence in furthering these ends.
>
> Zawias were accordingly built at all the places where the best supply of water was to be obtained, these being in themselves both strategic points for intertribal warfare and stages on the great trade routes running from north to south and east to west. Having thus created a neutral meeting place for the tribes who hitherto had been compelled to resort to a trial of armed strength to settle their differences, it was but a short step to persuade them to submit their difficulties for solution by an authority which was above and outside tribal disputes. Tribal areas were defined and water and grazing rights agreed upon, while for the traders the Zawias took the place of exchanges where prices could be settled, ventures discussed and embarked upon, and commodities disposed of; for all and sundry the Zawia afforded a secure and profitable meeting place where domestic, tribal, commercial, religious, and legal difficulties could be arranged, and such contact with the outer world maintained as was politically desirable or commercially necessary[50]."

3.49 The religious purpose of the Order's missionary drive was set out in the letter written by the head of the Senoussi to the people of Ounianga around 1850:

> "We wish to ask you to obey what God and his Prophet have ordered, making the five (daily) prayers, keeping the (fasting) month of Ramadan, giving tithe, making the Haj (pilgrimage) to the sacred home of God (Mecca) and avoiding what God has forbidden[51]."

It was essentially a revivalist movement in Islam. Once the Order became established among the tribes in Cyrenaica, its message of Islamic revival was carried across the Central Sahara and into the Eastern and Central Sudan along the traditional trading routes of the two great Cyrenaican tribes, the Mijabra and the Zuwaya. By winning their confidence, the Senoussi gained access to the communications network of the Sahara, the caravan routes[52]. The instruments of Senoussi policy were the brothers of the Order (ikhwan) and the zawiyas.

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[50] Ibid.

[51] Ziadeh, N.: Senoussi: A Study of a Revivalist Movement in Islam, Leiden, E.J. Brill, 1958, pp. 95-96.

3.50 With the advance of the French military forces after 1900 from the area of Lake Chad northward toward the borderlands of Borkou, Ennedi and Tibesti, and eastward toward Ouadaï, the Senoussi took on an expanded secular role: the organization of resistance among the indigenous tribes - the Toubou, the Tuareg and the Awlad Sulaiman - against the armed advance of the French. This required that the zawiyas established in Kanem, Borkou and Tibesti be fortified, unlike most of the zawiyas elsewhere. Although the zawiyas in these regions were few in number compared to regions further to the north, those that were established had a major role to play in all aspects of the exercise of Senoussi authority. With the advance of the French, they were turned into great blockhouses for the defence of the faith and the organization of resistance.

(b) The Spread of the Senoussi Order into the Sahara and the Sudan

3.51 In 1856, the Order moved its headquarters to the remote but commercially important oasis of Djaraboub. It made the move for several reasons: to increase the distance between it and foreign Powers, including the Ottoman Empire, and thus avoid their interference; but also to extend its mission southward to the Southern Sahara, the borderlands and the Sudan[53]. With the death of Grand Senoussi in 1859, his son Sayyid al-Mahdi assumed leadership. Under him, the Order expanded greatly toward the south and the Sudan.

3.52 There was a special affinity between the Senoussi and the remote areas of the Sahara and the Sudan, which were populated by nomadic tribes. In cities, such as Tripoli, its influence was far less than in far-away areas among unruly nomadic tribes or partly settled peoples whose observance of the tenets of Islam needed reviving and who came to accept a greater administrative and quasi-political authority[54].

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[52] Wright, Libya, Chad and the Central Sahara, op. cit., pp. 85-86.

[53] As used here and elsewhere, "the Sudan" refers not to the Sudanese territory but to the part of Africa lying south of the Sahara. The part of Chad lying below 15°N, for example, where the Sahel-Savanna region begins, would be considered part of "the Sudan" under this definition.

3.53 The Senoussi penetration of Tripolitania, on the west, started as early as 1845, with a *zawiya* being established at Mizda in the pre-desert south of Tripoli[55] (*Map No. 21*). *Zawiyas* were later opened at other important locations on the west-central Saharan trade and pilgrim network from which the Senoussi message could readily be spread, such as Mourzouk, Ghadamès and Ghat; and at the remote, but in the future influential, Fezzanese oasis of Waw al Kabir where, according to Duveyrier, the *zawiya* was opened in 1856[56].

3.54 The locations of some of the more important *zawiyas* and of [illegible]de routes discussed here and elsewhere are shown on *Map No. 21*. The [illegible]tion of Fezzan from about 1850 onwards led the Senoussi southwards down the main trade routes to the oases of Kaouar, such as Bilma, which were essential points of rest and replenishment in the midst of the desert. By 1866 there was a *zawiya* in the Kaouar oasis of Chemidour, just north of Bilma[57]. Although the Senoussi did not initially establish a *zawiya* in Tibesti, to the east, there is evidence that the Order came in contact with members of this tribe when the far-ranging Toubou traders visited the oases in Kaouar where *zawiyas* already existed. Nachtigal, who was in Tibesti in 1869, had this to say on the subject:

> "From Bardai [in Tibesti] is the most easterly part of the Fezzan district of Shergiya, the Wau group of oases. The road thither is well known to the Tu Tibesti people, for their spiritual authority, a Sanusi missionary, lives in one of the oases, and to him they not infrequently make pilgrimages to satisfy their spiritual needs and get secular advice[58]."

3.55 South of Kaouar along the caravan route, Senoussi missionaries were welcomed by some of the Muslims of the decaying Sultanate of

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[54] Wright, *Libya, Chad and the Central Sahara*, *op. cit*., p. 84.

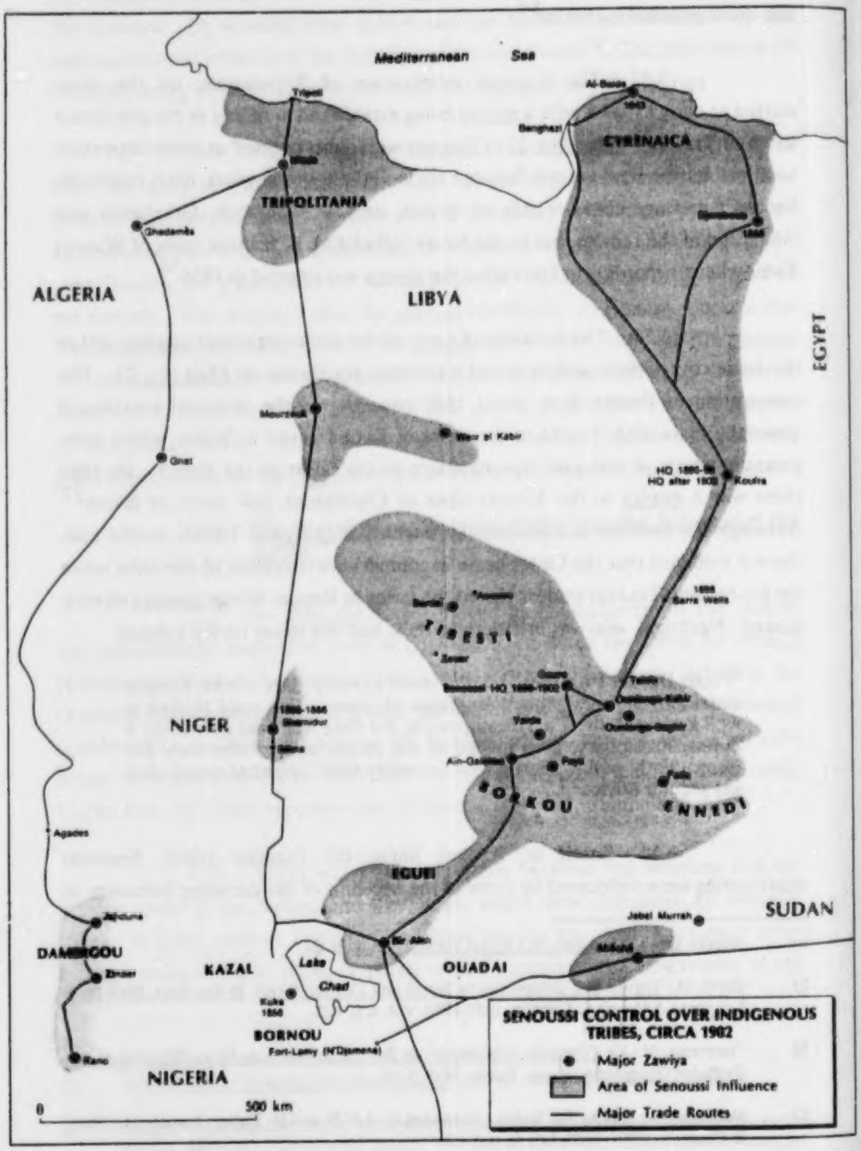
[55] Barth, H.: *Travels and Discoveries in North and Central Africa, in the years 1849-1855*, Longman, 5 Volumes, London, 1857-1858, Vol. I, p. 102.

[56] Duveyrier, H.: *La Confrérie Musulmane de Sidi Mohamed ben Ali es-Senoussi et son Domaine Géographique, etc*., Rome, 1918, p. 61.

[57] Nachtigal, G.: *Sahara and Sudan*, (translated by A.G.B. and H. Fisher) London, C. Hurst & Company, 1971-1988, Vol. II, p. 64, fn.

[58] *Ibid*., Vol. I, p. 36. (A copy of this page is attached at *Exhibit* 18.)

Map No. 21



SENOUSSI CONTROL OVER INDIGENOUS TRIBES, CIRCA 1902

● Major Zawiya

▨ Area of Senoussi Influence

— Major Trade Routes

Kanem. Nachtigal met two of these missionaries there in 1871 and learned that they intended to open zawiyas in Borkou and Ennedi[59]. But not until 1895 was the necessary agreement reached with the Awlad Sulaiman nomads (who had migrated into Kanem from the Sirt region of Libya following defeat by the Ottomans some 50 years earlier[60]) allowing the opening of the important zawiya at Bir Alali, northeast of Lake Chad. One of the Order's purposes in moving deep into Kanem was to rally local support for the, by then, inevitable need to resist the French advance into Central Africa. Kanem, however, was about the limit of the Order's advance to the south, just as Ouadaï marked the limit of its expansion to the southeast.

3.56 The hostility between the Senoussi and the Mahdi in the Nilotic Sudan put strict geographical limits to its expansion in that direction. The Mahdi were a missionary order resembling the Senoussi; but there existed between them what could be called a sort of professional jealousy, aside from other reasons preventing their association. As a result, the Mahdi governed the Eastern Sahara and the Senoussi governed the Central Sahara, and the two kept apart from each other. The Senoussi Order also failed to penetrate territories south of Kanem and Ouadaï. The approaches to the Sultan of Baguirmi (southeast of Lake Chad) in 1896-1898 and to Sultan Rabah ibn Fadlallah (hereinafter referred to as "Rabbah"), who had conquered Bornou and set up a loose "mahdist" state based on slave-raiding and slave-trading in the Chad area, were in the end fruitless[61].

3.57 The oases of Koufra in southern Cyrenaica, some 700 kilometres south of Djaraboub, had become the base of Senoussi southward expansion well before the Order moved its headquarters there in 1895. Geographically, Koufra was in the centre of the growing Senoussi network. It was about half-way (in travelling time, if not actual distance) between the Mediterranean port of Benghazi and Abéché, the capital of the Sultanate of Ouadaï and, thus, an essential stopping place for caravans from Benghazi. Under Senoussi control, ten routes radiated from Koufra: three into the Libya-Chad borderlands; three into the Western Desert; and four into various parts of

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[59] Ibid., Vol. II, pp. 337-338.

[60] Wright, Libya, Chad and the Central Sahara, op. cit., pp. 74-75. See, para. 3.39, above, and para. 4.83, et seq., below.

[61] Palmer, R.: The Bornu, Sahara and Sudan, London, John Murray, 1936, p. 269.

Libya[62]. Rosita Forbes, on her journey to Koufra in 1920-1921, recorded in her book how Koufra "controls the desert trade of half the Sahara"[63].

3.58 Thus, by the end of the 19th Century, there were three main areas where Senoussi authority became established: Cyrenaica and Koufra; the desert and sahel of Borkou, Ennedi, Ounianga, Tibesti and Kanem, in the borderlands; and the sahelo-sudanic lands of Ouadaï and Baguirmi, extending into what is now the Central African Republic. In Cyrenaica, the Order and its mostly unfortified zawiyas had no military function. By winning the confidence of the Zuwaya and Mijabra tribes, the Senoussi gained access to the commercial networks and trading contacts of the Central Sahara, whose safety and protection they organized, while taking advantage of this commerce, especially the north-bound trade in slaves and the south-bound trade in arms, to support the Senoussi mission.

3.59 The Senoussi had first become involved with the arms trade as a means of acquiring weapons for themselves. They continued the trade for commercial reasons. But then, with the French military advances, they encouraged it as a means of providing their followers among the tribes of the region with the weapons needed to resist the French[64]. All these activities, however, were adjuncts to its primary mission of spiritual renewal: an essentially benign, civilising mission among predatory and warlike peoples for the most part existing on the very margins of survival in an extremely harsh environment.

3.60 The first of two zawiyas established in Ounianga - at Ounianga-Kebir and Ounianga-Saghir - was founded in 1871 or 1872[65]. Visiting Borkou in 1871, Nachtigal tells of a Senoussi missionary he saw there "in the midst of the Arabs who, like naughty children, accepted his teachings and reproaches"[66].

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[62] Bell, K.D.: "Kufra" in Handbook on Cyrenaica, Cairo, 1944-1945. Map, App. A.

[63] Forbes, R.: The Secret of the Sahara, London, Cassell and Company, Ltd., 1921, pp. 158-159. (Copies of these pages are attached as Exhibit 19.)

[64] Wright, Libya, Chad and the Central Sahara, op. cit., p. 103.

[65] Duveyrier, op. cit., p. 65.

[66] Nachtigal, op. cit., Vol. II, p. 386.

3.61 Senoussi influence spread into the political vacuum of Borkou slowly and methodically. Aïn Galakka, in Borkou, was already an important commercial centre for the Awlad Sulaiman and the Toubou. Borkou itself, in contrast to Ennedi and Tibesti, was a food-producing region; indeed, it was considered particularly important to the Senoussi as their only source of grain in the south.

3.62 The Senoussi penetration of Borkou provided an essential link between the Senoussi Order's base in Cyrenaica, subsequently moved to Gouro in Ounianga, and the new areas of expansion in the south. Ennedi's importance for the Senoussi was as camel-raising country and as the link between Koufra and Darfour. Nachtigal learned in 1873-1874 that "it was the objective of the Sanusiyya to root out the last remnants of open paganism by founding a religious establishment in Ennedi"[67]. According to Duveyrier, the Order had by about the early 1880s transformed Ennedi into a little vassal-state where there were many zawiyas and where the local "king" was a docile and respectful brother of the Order[68].

3.63 The Toubou and many related (but all numerically small) groups of the Central Sahara had few historically identifiable political or religious leaders before the late 19th Century. They lived in small and often widely-dispersed family groups, with no acknowledged political, religious or cultural centre - "the principle of freedom raised almost to the level of anarchy"[69]. It was the sort of place that lent itself to the establishment of Senoussi authority.

3.64 The Senoussi began to move into Tibesti itself after almost surrounding the massif with zawiyas - notably at Kaour, Al Qatrum, Waw al Kabir, Koufra, Aïn Galakka and Gouro. The Toubou were approached through the one discernible figure of authority, the Derde.

3.65 When Nachtigal visited Tibesti in 1869, it had, according to him, never experienced a real or lasting dependence on any other country. But around 1895 an energetic and capable Tomaghera Toubou aged about 30, Chai

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[67] Ibid., p. 446.

[68] Duveyrier, op. cit., p. 65.

[69] Briggs, L.C.: Tribes of the Sahara, Cambridge, Massachusetts, Harvard University Press, 1960, p. 170.

(or Chaffami) Bogar-Mi, was installed as Derde. He revitalised the office, keeping it until his death in 1939. He also became the agent, first, of Senoussi penetration into Tibesti and, subsequently, of Turkish military occupation.

3.66 Chai was a reformer who tried to codify and rationalise the traditional customs of his people, align them with Islamic practice, extend and confirm his judicial role, and increase his small revenues[70]. But his own position was weak, and he needed the support of a greater outside authority, as well as practical advice. Accordingly, he approached both the Turks in Fezzan and the Senoussi in Cyrenaica. On a visit to Fezzan, he was authorised by the Turks to impose fines and imprison offenders, practices quite unknown in Tibesti until then[71]. As the French authority Chapelle explains, from journeys to the main Senoussi zawiyas (Djaraboub before 1895, Koufra from 1895-1899) Chai brought back-

> "... des tarifs d'indemnités et d'amendes et des listes de délits plus étendues et plus précises, parmi lesquels l'ivresse, les rixes, l'aide fournie aux meurtriers, etc... Mais c'est surtout sur la coutûme de la vengeance en cas de meutre que le Derdé a fait porter son effort, et là il était parvenu à faire accepter, au moins partiellement, le principe de la diya ou 'prix du sang'[72]".

3.67 Chai encouraged the Senoussi to visit Tibesti. Drawing on the recollection of elderly Toubou, Chapelle explains how Senoussi envoys gained a following among these people, perhaps the most difficult of converts, people who only knew outsiders as potential enemies:

> "Les Senoussistes, au contraire, qui jouissaient de la protection du Derdé, arrivaient avec des pièces d'argent de toutes sortes, des ballots de ces précieuses étoffes que les Toubous, avant leur venue, étaient obligés d'aller chercher au loin. Ils payaient tous les services rendus, faisaient des cadeaux à ceux qui assistaient à la prière du vendredi, nourrissaient les élèves qui suivaient leur enseignement[73]."

A zawiya was eventually established in Bardaï; it was to be the only one actually in Tibesti, but it had a key location in the Tibesti massif.

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[70] Chapelle, op. cit., p. 324.

[71] Ibid.

[72] Ibid., p. 324 (A copy of this page is attached at Exhibit 20.)

[73] Ibid., p. 377. (A copy of this page is attached at Exhibit 20.)

3.68 In 1899, the need to meet the growing French military challenge was a factor in the further move of the Senoussi Order's headquarters from Koufra to the oasis of Gouro among the spurs of the southeastern Tibesti range in Ounianga.

3.69 Gouro became perhaps the most important location from which Senoussi authority and leadership were projected and coordinated among the indigenous tribes in the borderlands regions[74]. But it must also be remembered, as pointed out above[75], that the Senoussi, like Libyan Arabs in general, felt comfortable in remote areas of the desert and places like Gouro - more comfortable than near the more threatening regions of the Mediterranean coast. It was from Gouro that the Order inspired and directed local resistance to the French advance from Lake Chad into Kanem. In January 1902, the French stormed and took the southern outpost of the Senoussi, the great zawiya at Bir Alali. Its capture forced the Senoussi leadership out of Kanem, and they fell back on Borkou and Ennedi.

3.70 It is pertinent to mention here how distorted the picture of the Senoussi became as conveyed to Europe, largely through French military sources, and widely published in the newspapers and journals of the time. The Senoussi Order had no "armies of fanatics", as European propaganda maintained at the time. An accurate account may be found in a document entitled "Notes on the History of Senussiism and Relation to the African Possessions of European Powers", prepared by the British War Office for the General Staff, dated 18 January 1906[76]. In a part of this document prepared by Mayor G. T. Forestier-Walker on 1 August 1902, the extent of Senoussi penetration is summarized in these words:

> "Practically the whole of the oases and the nomad population between Egypt and the Sudan on the east and the Tuareg country on the west[77] are Senussiites to a man.

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[74] As will be seen, in 1913, Colonel Largeau even proposed that Gouro be included as part of the Italian Colony of Libya. See, para. 4.164, below.

[75] See, para. 3.13, above.

[76] 18 January 1906, WO 106/1531, British Archives Annex, p. 81.

[77] The Tuareg were in oases such as Ghat, near the Algerian border, and in the region of Kaouar.

> The Tuareg tribes are divided, and many of them came under French influence.
>
> Senussiite missionaries are now pursuing an active campaign among these tribes, with what effect the future will show[78]."

As will be seen in Part IV[79], the future showed the Tuareg tribes rallying to the side of the Senoussi and the other Senoussi tribes in their attempt to halt the French military advances onto their lands.

3.71 This British report then goes on to say that the Senoussi, fighting in the Lake Chad region or in Ouadaï -

> "... would have to rely for his main support on his personal followers[80], the dwellers in the Oasis of Tibu, the Awlad Suleiman and Waddai army."

Turning to the future and to the Senoussi's relations to the African possessions of the European Powers, this report continues:

> "The reader of the foregoing history can hardly fail to be struck with the eminently peaceful character of the confraternity under its present head. Colonisation and cultivation have always been its policy, combined with avoidance of interference on the part of civilised Powers by withdrawal into regions inaccessible to them, whenever the necessity was deemed to have arisen.
>
> Thus we find Senussi leaving Jaghbub for Kufra, owing to the too pressing attentions of Turkish officials and of the Sultan.
>
> His withdrawal from Kufra to Geru is supposed to have been partially due to the proximity of the latter (sic) place to the Egyptian and Turkish Governments.
>
> Until the recent fighting with the French he has always refused to be drawn into active quarrels. He observed a strict neutrality with regard to the Mahdi and Khalifa, and although his protégé, the Sultan of Waddai, was constantly at war with Rabeh Zubehr, he himself kept well out of it. In fact, no single warlike action can be laid to his charge until the establishment of the French on the northern shores of Lake Chad, and their appearance in Baghirmi, to the south of Waddai, warned him that retirement could now only be in a direction which would cause him to re-approach one or

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[78] War Office Notes on the Senoussi, op. cit., p. 8, British Archives Annex, p. 87.

[79] See, para. 4.92, et seq., and para. 4.106, below.

[80] The ikhwan; see, para. 1.22, above.

> other of the Governments, from the proximity of which he had already thought it wise to withdraw.
>
> He not unnaturally considered himself to be cornered, and decided to fight.
>
> Even after the first battle, which would appear to have gone in his favour, he is reported to have given orders that the French should not be pursued beyond the borders of the Aulad Suleiman tribes, and that they were only to be again attacked if they advanced.
>
> It would, therefore, appear most improbable that Senussi will be the aggressor in any conflict which may arise in the future, unless the country under his influence is invaded.
>
> For the moment matters are at a standstill. The French have withdrawn from Kanem, and are engaged in consolidating their position in the country south of Lake Chad. This is a matter which will take some time, but sooner or later, according to the influence wielded by the Colonial party in France, the forward pressure will recommence, northwards through Baghirmi, and eastwards and northwards from Zinder and Lake Chad, and then it is to be expected that the active resistance of Senussi will be again encountered[81]."

This contemporary report, from a more neutral source than the French army at the time, gives a very different picture of the Senoussi than the reports then circulating publicly in Europe.

CHAPTER III. ASPECTS OF THE ECONOMIC GEOGRAPHY OF THE LIBYA-CHAD BORDERLANDS

3.72 Two principal aspects of the economic geography of the Libyan-Chad borderlands will be brought out below: first, the economic links between this area and the Mediterranean coast to the north[82]; second, the relative economic isolation of these regions from the regions to the south, which now comprise Chad. Even the attempts of the French during the period of colonial intervention to divert the caravan routes away from Tripoli to Algiers failed permanently to disrupt the embedded and underlying pattern of trade and commerce between the Libya-Chad borderlands and the Libyan north, as is attested by independent observers as late as 1920[83]. The strength of this linkage between Tripoli and the borderlands regions and, in turn, with the Sudan is borne out by its ability ultimately to survive such a strong assault by the French colonial authorities. As to the second factor, the isolation of the borderlands was, if anything, increased as a result of both French colonial policy and post-independence Chadian policy, as will be shown below[84].

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[81] War Office Notes on the Senoussi, op. cit., p. 11, British Archives Annex, p. 90.

[82] See, generally, McLachlan, K.S.: (1977) Tripoli and Tripolitania, Institute of British Geographers, "Libya's oil resources", Libyan Studies, Vol. 19, 1989.

[83] Admiralty Handbook on Libya, 1920.

SECTION 1. Fezzan and Southern Cyrenaica

(a) The North/South Axis

3.73 The economic links between the north, the borderlands, and the south, and the hierarchies generated from Tripoli, are well documented. Tripoli was at the top of the hierarchial system of trade and commercial management. The interface between the activities of the urban merchants of the coast, as managers and financiers of caravans, and the hinterland, placed the Libyan merchants at the apex of the trade pyramid[85]. The caravan trails acted as the transportation system to the Mediterranean for products as diverse as slaves, gold, ostrich feathers and ivory[86]. Even in the years following the commercial export of oil in 1961 and the effective nationalisation of most trade in 1980, the trans-Saharan linkages were retained in vestigial form[87].

3.74 The Karamanli rulers in Tripoli maintained a loose surveillance over this commercial traffic. When the Ottomans asserted more direct control after 1835, garrisons were established in all the major centres of southern Tripolitania and Fezzan. At Mourzouk the garrison numbered an estimated 500 men, according to the British[88]. The mutasarrifiyah of Fezzan had sub-districts throughout the area. In the deep southwest the main garrison was at Ghat, and control there increased, starting in 1874. In southern Cyrenaica, an area of barren desert, the Ottomans maintained control through military patrols and visits rather than through the maintenance of garrison facilities, which were not necessary in any event due to the authority exercised by the Senoussi.

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[84] See, para. 3.88, et seq. below.

[85] Cachia, A.: Libya under the Second Ottoman Empire, Tripoli, Government Press, 1945, pp. 151-152.

[86] Ibid., p. 168.

[87] Davies, J.: Libyan Politics: Tribe and Revolution, London, I.B. Tauris, 1987, pp. 236-237.

[88] Admiralty Handbook, op. cit., p. 20.

3.75 At the start of the 20th Century, the transport and communications systems in this region were based on camel trains travelling over well-worn caravan routes. After 1912, the Italians reinforced this system with new dirt or chausée motor roads that linked the south to the Mediterranean with increasing effect. The Italians even proposed railways for the south. The dissolution of the Italian administration in the early 1940s, followed by wartime occupation of the country, dislocated economic activities in the south, especially since military administration was divided between the British and the French. A re-emergence of the pre-war pattern of contact and trade - the long-standing trend of economic linkage from south to north - occurred after Libya's independence in 1951.

3.76 The situation changed with increasing rapidity during the 1950s largely as a result of exploration for hydrocarbons. Concessions were granted to nine foreign companies after the promulgation of Libya's Petroleum Law of 1955. The effects of the discovery and production of oil spread into the Central Sahara and the Libya-Chad borderlands, reestablishing the primacy of the Libyan Mediterranean coast as the dominant link in the economic hierarchy of the region. There was a flood of labour to the north from the Central Saharan region, especially from the Libya-Chad borderlands. Much of this labour replaced the farming workforce in the Libyan southern oases, which itself moved to the northern coastal region or to the towns of the Fezzan.

(b) Effects of the Discovery of Oil and Water

3.77 The coming of the development of the oil industry in Libya in the 1950s caused major changes in the geography of economic activity in the southeast of Libya. Following the issuance of the 1955 Petroleum Law with its favourable terms for foreign oil exploration companies, these explorations pointed to the great sedimentary embayment of the Gulf of Sirt as the most likely area in which to find hydrocarbon-bearing geological structures. Huge sums of money were expended, beginning in the 1950s, to explore for and develop oil reserves. The expenditure of money on exploration was in local currency and was expended on local services such as transport, food supply, and labour, a substantial amount concerning the southeast quadrant of the country. Even before commercial oil was produced in 1961, more than 90% of available local goods and services were bought or hired by the oil industry. A large part of the local population was drawn into working for the oil companies or their suppliers. The direct impact on the regional economy was enormous. In addition to the direct impact of the oil industry through the day-to-day exploration and development activities, the flow of oil revenues generated by exports beginning in 1961 provided the means to fund economic and welfare projects.

3.78 A further effect of oil exploration was the discovery of vast underground water reservoirs at Koufra, Tazirbu, Serir and other sites in the southeast. In desert and semi-desert climatic conditions, water is the principal determinant of economic activity. During the search for oil in the southeast, Occidental Petroleum happened upon a significant sub-surface reservoir of water below Koufra, thus opening the way for a large-scale program of water development. Later hydrological studies revealed that the southern part of Cyrenaica was water-rich. This led to the extensive development of agriculture in situ, beginning in the 1960s at Koufra itself, and to the export of water to the north via the Great Man-Made River Project, the first segment of which is currently under completion[89]. These developments to the north acted as a magnet for the borderlands and held out the realistic hope that the borderlands regions would cease to be neglected.

(c) Conclusions

3.79 The economic history of the area shows the powerful influence exercised by the coastal regions of Tripolitania and Cyrenaica on the economy of the Libya-Chad borderlands since colonial times. This economic relationship had, in fact, long pre-dated the colonial period. Colonial interventions were never sufficient to eliminate the basic orientation of this activity. After Libya's political independence, the long-standing economic links, interrupted during World War II, were restored and augmented with the emergence of the oil industry in the 1950s, with the economic development programs that oil revenues made possible, and with the discovery of huge water resources in southern Cyrenaica.

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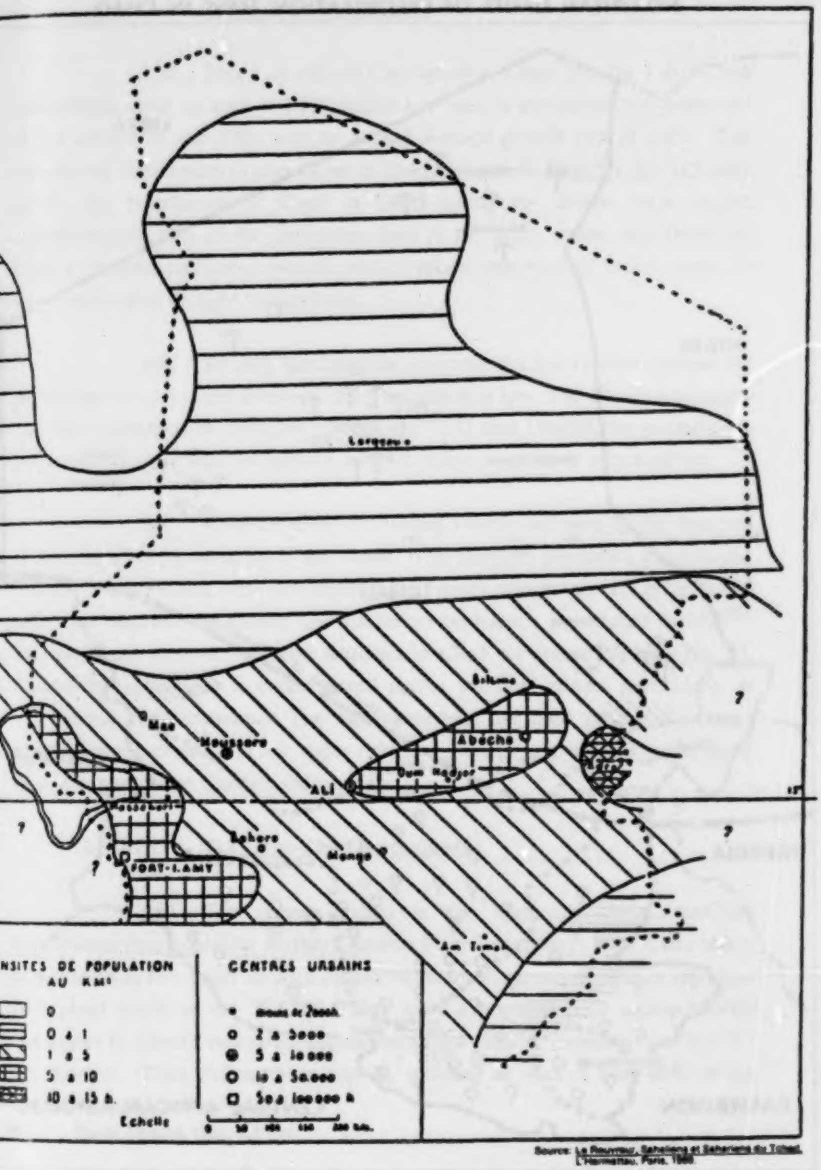
[89] See, para. 3.99, et seq., below for a further discussion of this water project.

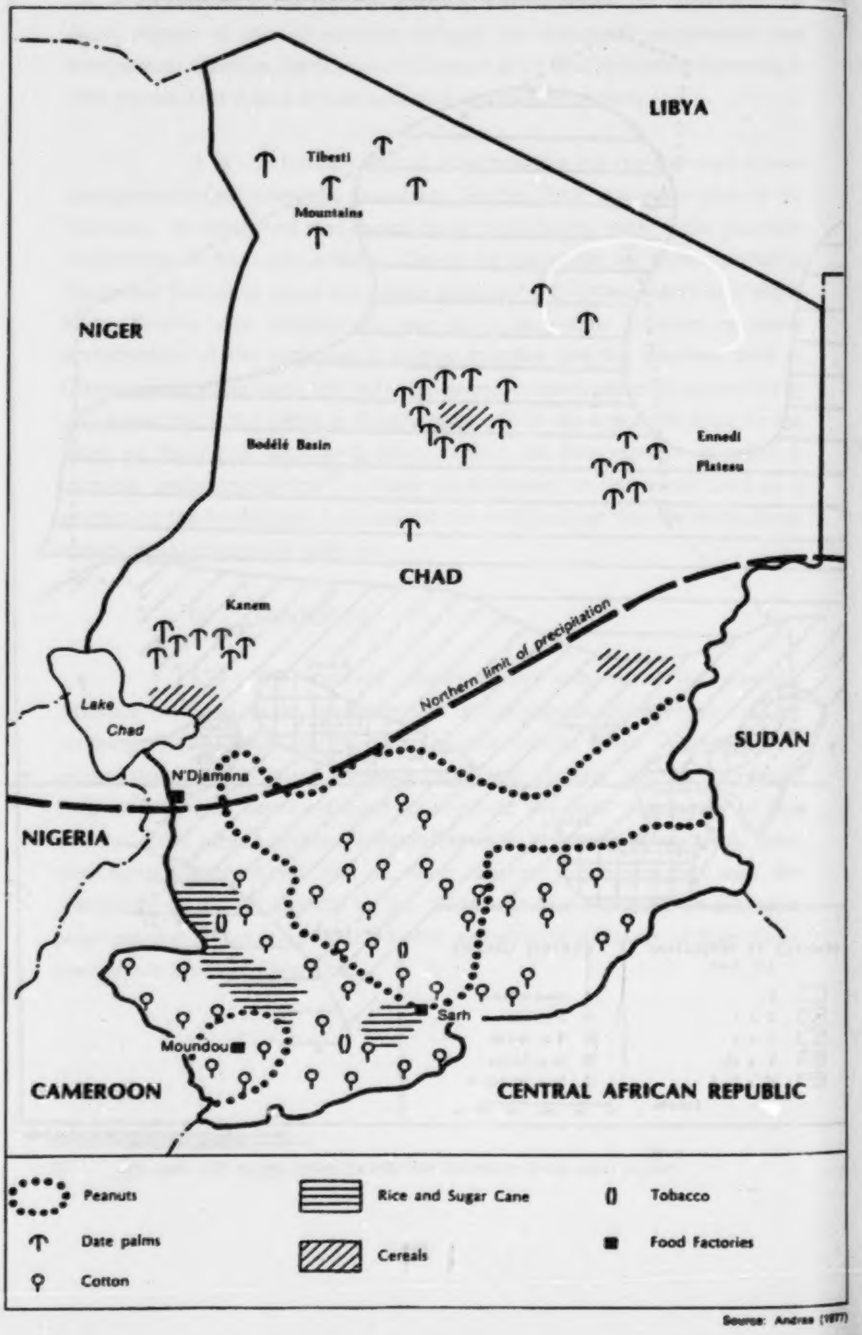
Map No. 22



Source: Le Rouvreur, Saheliens et Sahariens du Tchad, L'Harmattan, Paris, 1989.

Map No. 2

NORTHERN LIMITS OF PRECIPITATION ZONE IN CHAD



Source: Andrea (1977)

SECTION 2. An Overview of the Economic Geography of Chad and the Libya-Chad Borderlands

3.80 Based on official Chadian data, Chad plus the Libya-Chad borderlands cover an area of 1.234 million km^2 and its population was estimated at 5.4 million in mid-1988, with an annual average growth rate of 2.6%. The density and distribution of population in Chad is shown on Map No. 22. This map shows the boundaries of Chad as Chad apparently claims them to be. Approximately 30% of the population lives in the major towns; and there has been a marked tendency towards rural-to-urban migration in recent years, in large part due to drought and civil war.

3.81 Broadly speaking, the economy of Chad revolves around the production of cotton and livestock, but productivity is low. The Chadian economy has been assaulted by droughts (1968/69, 1972/73 and 1984/85, for example), a protracted civil war and fluctuations in world prices for primary commodities.

3.82 Chadian economic history is over-shadowed by the disparity of development between north and south. The southern provinces, south of the latitude of Lake Chad, were described by the French colonial powers as "le Tchad utile" and became the chosen site for cotton cultivation, introduced in 1928[90]. The principal types of economic activities in Chad are shown on Map No. 23. Manufacturing activity is concentrated in the southern towns, particularly in N'Djamena and Moundou. The main industries are food processing, cotton ginning, textile production and sugar refining. Foreign, especially French, firms have a large stake in Chadian industry[91].

SECTION 3. The Libya-Chad Borderlands

3.83 The regions called in the Memorial the Libya-Chad borderlands (but excluding northern Kanem for this purpose) - what Chad refers to as the "B.E.T." - cover an area of 530,000 Km^2, not much smaller in size than its regions south of the "B.E.T." They have a population of under 100,000 compared to Chad's estimated population of 5.4 million, including the "B.E.T." borderlands. Thus, the northern regions, covering an area of over 40% of the total land area of Chad and of the Chad-Libyan borderlands together contain less than 2% of the total population. The principal economic activity of the borderlands region consists of livestock herding, date cultivation and the export of salt. Cultivation operates at a very low level of technology.

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[90] Jeune Afrique, 1985, XXVIII.

[91] Buijtenhuijs, R.: Le Frolinat et les révoltes populaires du Tchad, 1965-76, La Haye, Mouton, 1978.

(a) Tibesti

3.84 It has been noted in the previous chapter that the population of Tibesti is estimated at 8,000 persons, the majority being Teda-Toubou, two-thirds of whom are nomadic or semi-nomadic[92]. So far only salt deposits, natron, amazonite and wolfran (tungsten) have been discovered[93].

3.85 Le Rouvreur concluded gloomily in 1962 that: "l'homme du Tibesti est le Saharien le plus déshérité au Tchad"[94]. At that time, camel and goat herding was practised on a small scale by the Toubou, who also owned palm groves and gardens in oases such as Bardaï. According to Le Rouvreur, in winter, dates would be sold by the men as far away as Koufra, Fezzan or Kaouar, while the women would stay behind to organise cultivation. Cereals, especially wheat and millet, as well as tomatoes and onions, were grown then (and now) in small gardens. However, agricultural productivity remains low.

(b) Ennedi

3.86 Ennedi is the best-watered area of the borderlands region[95]. The Mourdi depression acts as a natural reservoir, containing many shallow wells, fed by springs from the northern slopes of the Ennedi massif, from Erdi and from eastern Tibesti. Springs emerge to the southeast of the Ennedi massif. The Mortcha plain is the richest pastoral area of Ennedi, where herds of camel and zebu cattle are raised. The income of Ennedi is derived from the sale of herds and the transport and sale of dates and salt in Abéché[96].

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[92] See, para. 3.43, above.

[93] Chapelle, op. cit., p. 85.

[94] Le Rouvreur, op. cit., p. 400.

[95] See, Map No. 15, referred to in para. 3.30, above.

[96] Le Rouvreur, op. cit., p. 431.

(c) Borkou-Ounianga

3.87 The areas of Borkou and Ounianga are shown on Map No. 15[97], which depicts the natural vegetation. Southern Borkou consists of extensive plains, such as the Bodélé, referred to earlier, which were once lake beds. The only surface water in the region is at Ounianga: a large salt lake at Ounianga-Kebir and a freshwater lake at Ounianga-Saghir. Part of Borkou's wealth lies in its salt desposits. The main areas of grazing land are to be found at Kichi-Kichi to the west and Madadi and Mourdi to the East, as well as in the south on the fringes of Mortcha (Map No. 15). The cultivation of date palms, cereals and vegetables is more promising in Borkou than elsewhere in the borderlands regions.

SECTION 4. The Effects of French and Chadian Policies

3.88 During French military occupation in the colonial period, the borderlands regions were to a large extent written off as of no economic interest. They were thought of as regions of nomadic and semi-nomadic pastoralism with little development potential. Contemporary analyses indicate that strategic considerations were paramount in the mind of the French authorities, who had little interest in spending money on commercial development[98].

3.89 In 1935, in a report to Foreign Minister Pierre Laval, Capt. Schneider concluded that strategic considerations were paramount as reflected in the fact, for example, that budgetary allocations to the region were well below those for the south. Schneider put it this way-

> "... notre administration locale n'a jamais tendu à l'exploitation normale des pays du nord, aussi bien que du Tchad en général. Depuis 30 ans, rien n'a été fait pour l'amenagement des points d'eau dans les zones de pâturage et de circulation. les taxes de douane à l'entrée des marchandises venant de Tripolitaine restent impayées à Zouar, l'impôt pour des raisons politiques qui disparaissent n'est perçu au Tibesti, enfin, l'exploitation des salines ne donne lieu à aucune ressource pour la colonie qui en a la propriété dominale ... les charges imposées au Budget colonial et

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[97] Appearing at para. 3.30, above.

[98] Massip, J.M.: Contribution à l'inventaire des ressources du Tibesti, 1969, Thèse (IIIème Cycle) Geog., Paris EPHE, IVème sér., p. 1. (Pursuant to Article 50, paragraph 2 of the Rules of Court, a copy of the thesis has been deposited with the Registrar.)

au budget local ne correspondent pas à une gérance normale de leurs éléments.[99]"

3.90 The first fifteen years of independence brought little improvement to the borderlands. Schools and clinics continued to be neglected. One of the principal grievances expressed by the rebel movement, the Frolinat, was that this region had escaped the attention of the economic planners in the post-colonial period but was nevertheless a valuable source of government revenue in the form of punitive taxation. A survey of economic development plans in the 1960s clearly showed the preference given to industrial, agricultural and infrastructural projects in the southern regions of Chad[100]. In a very real sense, both before and after independence, the borderlands were largely written off - a practical reflection of the fact that title to the region was unresolved between Libya and Chad.

CHAPTER IV. THE IMPORTANCE OF LIBYA'S SOUTHERN FRONTIER TO ITS SECURITY

SECTION 1. Factors Contributing to Libya's Vulnerability

3.91 Every State has its special security concerns. They arise from the particular geographical setting and the location and nature of the country's vital centres. They also may be created by the political environment in which the State finds itself, particularly in respect to its immediate neighbours. Moreover, the security concerns of a State extend not only to its land territory but also to the peoples of the State, which in desert regions, "inhabited" by nomadic or semi-nomadic tribes, may pose complex issues. This is particularly the case if the territorial boundaries have not been settled.

3.92 Libya's security concerns are caused by a number of factors. One such concern is its large landmass compared to its small population. Another relates to Libya's maritime security. For Libya has a long Mediterranean coastline, in the centre of which is the deep indentation formed by the Gulf of Sirt, dividing the two main cities of the country and exposing the heartland of Libya to possible attack from the sea.

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[99] Capt. Schneider, Report to Pierre Laval, Foreign Minister, 1935, p. 127. (A copy of the Report is attached as Exhibit 21.)

[100] Buijtenhuijs, op. cit., p. 86.

3.93 Libya has frontiers with six other States, some of which extend over 1,000 kilometres in distance. There are unresolved boundary questions concerning certain of these frontiers, and Libya's boundary on the south, to the east of Toummo, has never been fixed and, thus, remains to be determined. This includes the boundary between Libya and Chad involved in the present dispute; and aside from the insecurity that arises from the fact that this boundary has not been determined, there is the very serious problem posed by the political instability of Chad, which has been tragically racked by rebellion and civil war almost since its inception as an independent State. This situation has led to repeated interventions by major foreign powers, such as France and the United States, not to mention other African States.

3.94 When Libya gained its independence in 1951, considerations of security were not in the forefront of its worries; it was a very poor country, struggling to survive, with not much beside its sovereignty to defend. And the continuing French occupation of the southern part of the country was a threat even to that. After the early 1960s, this situation totally changed. With the turn in Libya's fortunes resulting from the discovery of oil, Libya became a relatively wealthy State (in terms of GNP) and very much at risk, unlike its less fortunate neighbour Chad, from more powerful States that might seek to gain control of its oil resources. Of course, under the principle of the equality of States, this situation gave Libya no special right to security or to the protection of its sovereignty not available to Chad, but it did create for Libya a heightened awareness of its vulnerability and of the need to take adequate measures of protection.

3.95 Libyans have always been apprehensive of the dangers of foreign intervention from the sea. Except for invasions by other Muslim States, attacks on Libya have usually come from the Mediterranean[101]. Thus, for security, the peoples of Libya tend to seek refuge in the desert, which to them is a place of safety.

3.96 This in-born apprehension of attack from the sea is not eased by Libya's coastal geography: the deep indentation made by the Gulf of Sirt into the Libyan landmass occurs right where Libya's heartland and sole vital centre is located. As the Court is aware, there have been repeated incidents resulting from the presence of foreign navies in and near the Gulf.

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[101] See, para. 3.13, above.

3.97 As a result, it is not surprising that Libya, so directly threatened from the sea, should seek to assure the security of its land frontiers and why Libya has been so concerned over the foreign interventions that have occurred in Chad with the outbreak of rebellion and civil war. With its northern flank on the Mediterranean exposed to attack, Libya can hardly afford to have its southern flank insecure as well.

3.98 The area of the Sirt Basin, which lies just south of the Gulf of Sirt, is where almost all the producing oilfields of Libya, consisting of eight major fields, are to be found. Augmenting these facilities are natural gas fields and two large refineries. Their location is shown on Map No. 24. The Sirt Basin is also the centre of Libya's fertilizer and ammonia production. Nearby, at Misuratah, a major iron and steel complex is under construction.

3.99 Of great importance to Libya's economy and, hence, security, is its prodigious water pipeline project, known as the Great Man-Made River, inaugurated in August 1984 to counter Libya's poor agricultural conditions caused by a combination of thin soils, extreme thermal conditions and lack of water. During the 1970s, efforts were concentrated on utilizing Saharan fossil water reserves in major irrigation projects at Koufra and Sarir. But with the discovery of extensive underground sources in the area of Koufra, the irrigation scheme was dropped in favour of the Man-Made River Project[102]. The location of these facilities and pipelines in the course of construction is illustrated on Map No. 25.

3.100 The first stage of the project has been to link water wells at the Jalu and Tazirbu oases by pipeline to a holding tank in Ajdabija, on the coast of the Gulf of Sirt. From there the pipeline divides, one branch taking water to Benghazi for domestic and agricultural use, the other travelling to Sirt to provide irrigation water and, ultimately, to Misuratah for industrial use at the steel plant complex mentioned above, and then to Tripoli. Around Sirt, some 180,000 hectares are planned for irrigation, over 1.5 million hectares for ranching, and over 135,000 hectares for dry farming.

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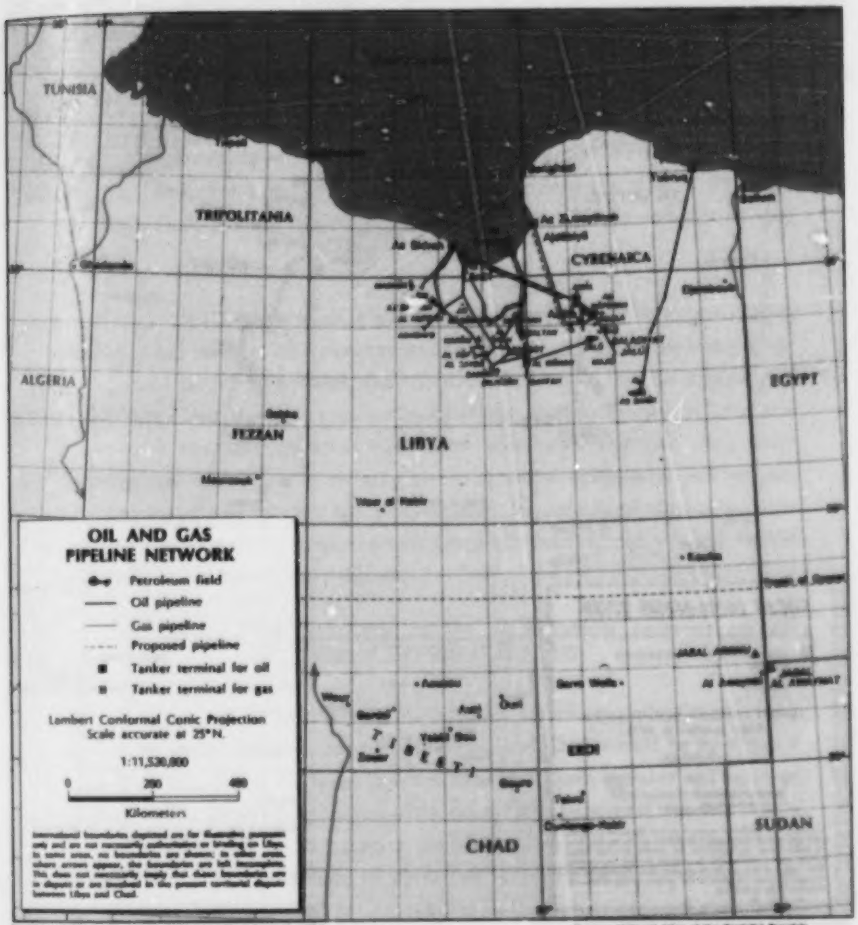
[102] See, para. 3.78, above.

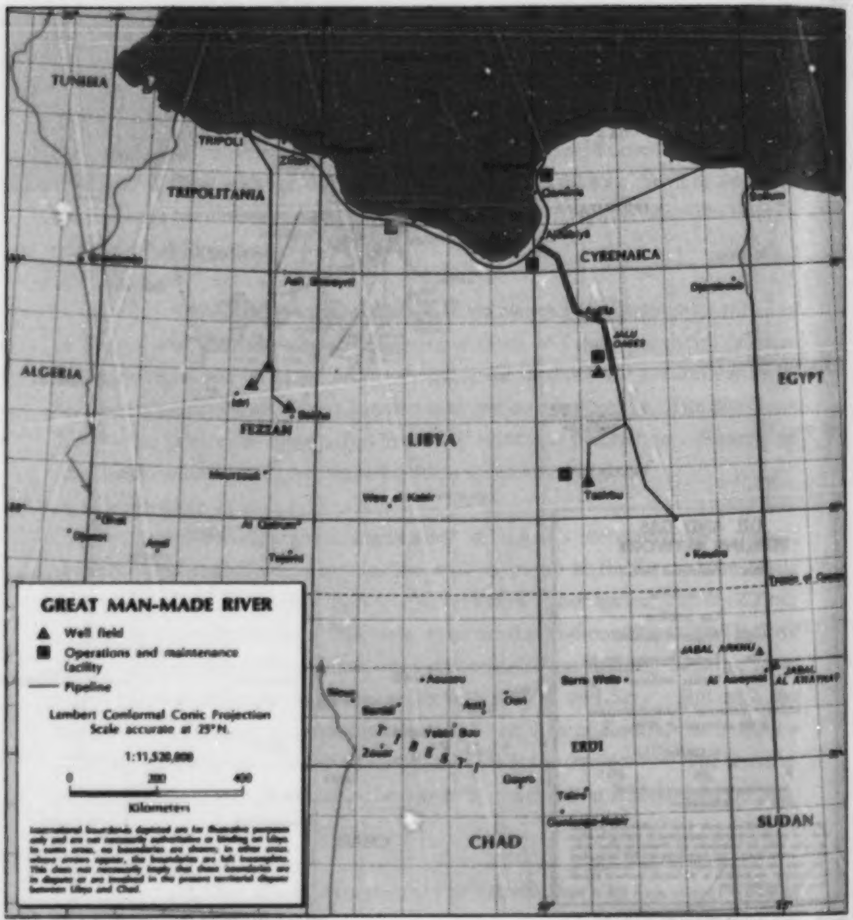
Map No. 24


TUNISIA
Tripoli
TRIPOLITANIA
Benghazi
Tobruk
As Sidrah
Ajdabiya
CYRENAICA
ALGERIA
EGYPT
FEZZAN
LIBYA
Kufra
TIBESTI
CHAD
SUDAN
OIL AND GAS
PIPELINE NETWORK
Petroleum field
Oil pipeline
Gas pipeline
Proposed pipeline
Tanker terminal for oil
Tanker terminal for gas
Lambert Conformal Conic Projection
Scale accurate at 25°N.
1:11,520,000
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

Specially prepared for presentation to the International Court of Justice

Source: National Atlas of the Socialist People's Libyan Arab Jamahiriya, Secretariat of Planning, Surveying Department, 1977, p. 75 & 76.

Map No. 25


TUNISIA
TRIPOLI
TRIPOLITANIA
ALGERIA
FEZZAN
Sabha
LIBYA
CYRENAICA
Ajdabiya
Awjila
JALU OASES
EGYPT
Tazirbu
Kufra
Al Qatrun
Murzuk
Ghat
Djanet
Tropic of Cancer
JABAL ARKNU
Al Awaynat
Aouzou
Bardai
Zouar
Yebbi Bou
ERDI
CHAD
SUDAN
GREAT MAN-MADE RIVER
Well field
Operations and maintenance facility
Pipeline
Lambert Conformal Conic Projection
Scale accurate at 25°N.
1:11,520,000
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

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Source: Map of the Socialist People's Libyan Arab Jamahiriya, Mali International, scale 1:3,000,000

3.101 The strategic importance of the Great Man-Made River Project, and thus the importance to Libya's security of this area running from the vicinity of Koufra, where the underground sources are, to the Sirt Basin, is obvious. This is by far Libya's largest project at the moment. Eventually, it is expected that five million cubic metres of water per day will be delivered to the coast. The system is expected to operate for up to 100 years. The massive industrial, agricultural and urban development programs around the Gulf of Sirt have been made possible by this discovery of water and the development of ways to use it.

3.102 As a result of the discovery of oil, gas and water, the Gulf of Sirt region has been totally transformed to become the nucleus of the country and its industrial heart. In addition, the region of the Gulf of Sirt is Libya's major export depot and the centre of communications and transportation. An arid desert area has, through good luck, hard work, and bold and imaginative planning, been made into the teeming industrial hub of the country. But just as it has been transformed so has the importance of the security of this region been radically altered; and the need to secure Libya's frontiers on the south as well as the north has increased proportionately.

SECTION 2. The Relevance of the Geographical Situation to the Attribution of Territory in this Case

3.103 What follows is not intended to indicate to the Court Libya's views as to where the boundary between Libya and Chad should be or where it might have been if the two States had been able to sit down together and agree on a boundary. As Libya's Submissions make clear, Libya believes it has clear title to territory considerably to the south of the geographical features discussed here. Nevertheless, it is appropriate to point out the significance of certain facts, principally of a geographical nature, relating to the borderlands between Libya and Chad, and their bearing on the security of Libya and of Chad. For factors such as these have traditionally been an element taken into account in the settlement of boundary questions in State practice and in the resolution of boundary disputes by judicial bodies.

3.104 Inevitably, the eye falls in the first instance on the Tibesti massif, by far the most pronounced geographical feature within the General Setting of the dispute. Features such as this have been considered relevant in delimiting boundaries because of their military importance. Mountainous terrain may be viewed as a potential multiplier of combat power. Such a situation has been described in this way by a military expert:

> "In mountainous terrain the progress of invaders is not so much halted as highly canalised. If they are lucky the grain of the country - the alignment of the ridges and valleys - will correspond with the way they want to go; on the other hand the most awkward formation of the ground is a central massif which has spurs running away in a variety of directions[103]."

The "awkward formation" mentioned in the passage just cited is an apt description of the Tibesti massif. Being volcanic in origin, it has spurs running in various directions, as well as peaks, craters and deeply eroded valleys that follow no coherent pattern[104].

3.105 Aside from being a multiplier of combat power, a feature such as this enables its occupant to use such factors as shock and surprise, which can have a decisive military effect. The conduct of modern land-air war is dominated by intelligence. This is provided not only by satellites and aircraft but also by radar sited at altitude. Except in the few mountainous areas in this region, the concealment of men and equipment on any scale is difficult. It is here that the Tibesti massif is militarily so important: it provides the possibility of concealment while at the same time furnishing locations for surveillance; and the massif acts as a barrier to troop movement, as well. The latter is a key factor in modern land-air battles, which are largely governed by the mobility of ground forces and support units.

3.106 It is particularly interesting to note the location of this natural military citadel. If, as shown on Map No. 26, a line is drawn straight south along 19°E longitude from a point in the Sirt Basin near the centre of Libya's petroleum operations (28°N latitude) to the latitude of N'Djamena (12°N latitude), the capital and largest city of Chad, the length of the northern segment of the line from the centre of the Tibesti massif at approximately Yebbi Bou (21°N latitude) is shorter than the southern segment of the line (775 km versus 1000 km). The selection of the southern point at 12°N latitude is based on the fact that N'Djamena and south of there is the only strategically important section

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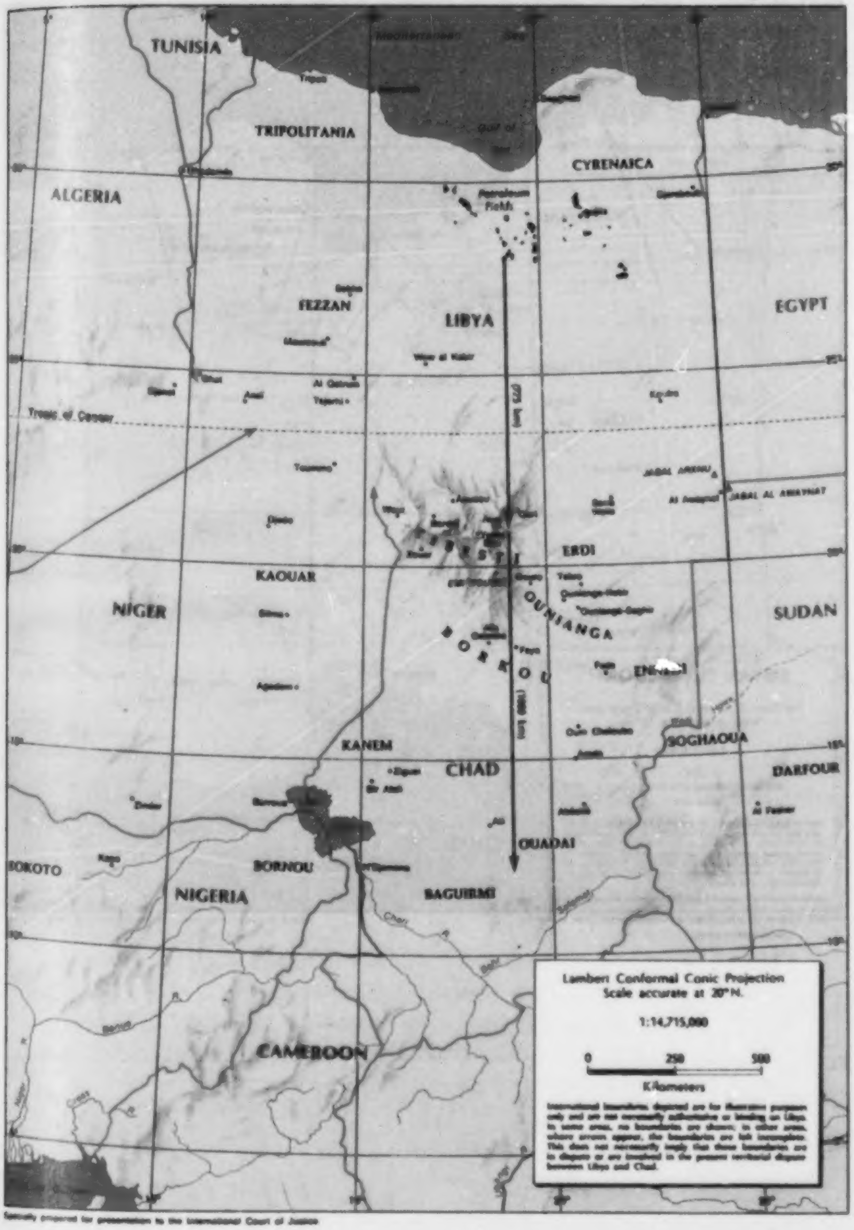
[103] Faringdon, H.: Strategic Geography, London, Routledge, 1989.

[104] See, para. 3.28, above.

Map No. 26



Lambert Conformal Conic Projection
Scale accurate at 20°N.

1:14,715,000

0 250 500
Kilometers

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

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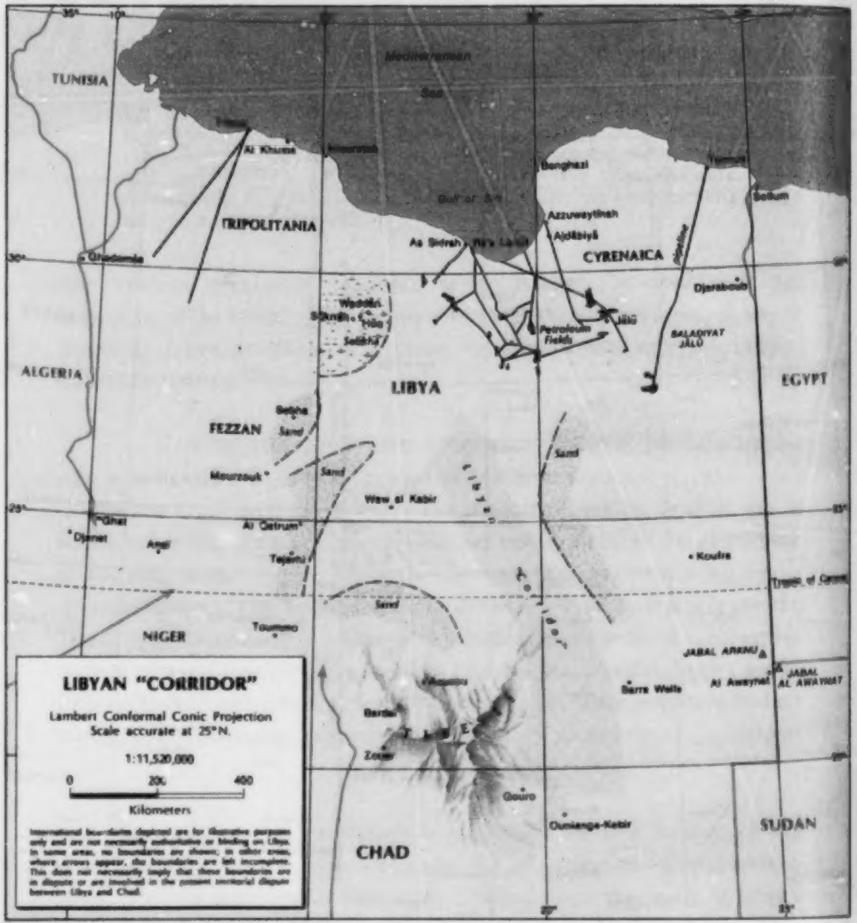
Map No. 27



LIBYAN "CORRIDOR"

Lambert Conformal Conic Projection
Scale accurate at 25°N.

1:11,520,000

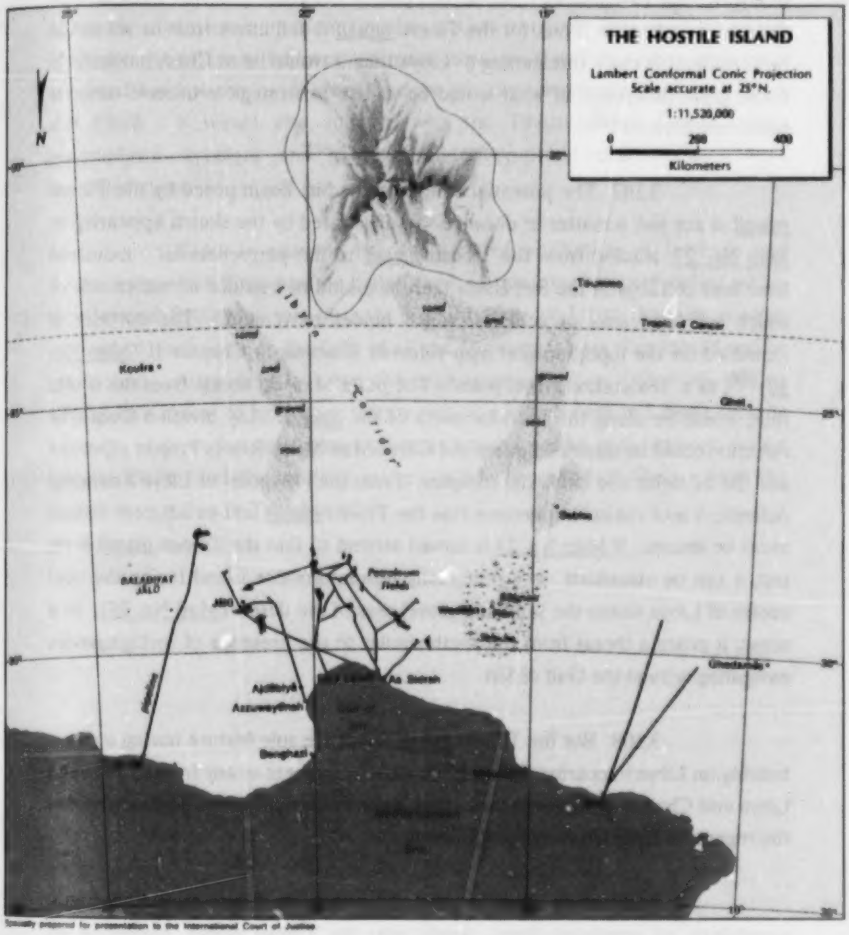
0 200 400

Kilometers

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

Specially prepared for presentation to the International Court of Justice

Map No. 28



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of Chad, since its economy relies on this part of the country, as has been seen in the previous chapter. Thus, for the Tibesti massif to fall into hostile hands would be considerably more threatening to Libya than it would be to Chad, particularly if the great difference in what would be at risk in strategic-economic terms is taken into account[105].

3.107 The potential danger to the Sirt Basin posed by the Tibesti massif is not just a matter of distance. As illustrated by the sketch appearing in Map No. 27, leading from the Tibesti massif to the petrochemical - industrial heartland of Libya in the Sirt Basin there is a kind of corridor on either side of which are sand seas or sebkhas, which hinder movement. The corridor is identified on the topographical map referred to above in Chapter II (Map No. 10)[106], as a "featureless gravel plain". The point of direct access from the south, thus, would be along this corridor north of the massif. Any invasion from that direction could be directed against the Great Man-Made Rivers Project pipelines and the oil fields and industrial complex. From the viewpoint of Libya's national defence, it is of critical importance that the Tibesti massif and its adjacent border areas be secure. If Map No. 27 is turned around so that the Tibesti massif is on top, it can be visualized as a potentially hostile offshore island facing the vital centre of Libya across the sand and gravel seas of the desert (Map No. 28). In a sense, it poses a threat from the south similar to the presence of foreign navies navigating around the Gulf of Sirt.

3.108 But the Tibesti massif is not the sole feature having a direct bearing on Libya's security. There is the eastern segment of any frontier between Libya and Chad to consider as well - that is the borderlands area generally within the regions of Erdi, Ounianga and Ennedi.

3.109 It is apparent that an attack on Libya from the south, particularly an armoured thrust, would skirt the Tibesti massif, passing in all likelihood to its east and taking the "heartland corridor" northward to the Sirt Basin along the "featureless gravel plain". The topography of this region - in which are found the Ennedi Plateau and the Mourdi Depression - is shown on

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[105] A "worst case scenario" for Libya would not be an attack by Chad but by a major power which, at a time of instability in Chad, had intervened and then, hiding its forces in the Tibesti massif, had proceeded to launch a surprise attack from the borderlands northward to seize Libya's oilfields and its heartland.

[106] See, para. 3.20, above.

Map No. 10. The international boundary shown on that map (the 1935 line) can be seen to take no account of the terrain - it is just a straight line drawn on a map. However, the east/west features just mentioned, could well provide a basis for a sensible boundary that takes account of the security considerations of both Libya and Chad. It would also coincide with the Tibesti-Ennedi Divide whose geographical structure and geographical-topographical characteristics were described above[107].

3.110 In carrying out the task of attribution of territory and determining which State has the better claim to title over territory falling within the General Setting of this dispute, it is the view of Libya that the security interests of each State in the light of all the facts are factors that should not be overlooked. Attributing to Libya the regions described in its Submissions to which Libya claims to have clear title, would take full account of Libya's security interests, while at the same time leaving an extensive land area between such a Libyan frontier and the strategic and economic heartland of Chad - what the French have called "le Tchad utile".

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[107] See, para. 3.20, et seq., above.

PART IV

THE IMPACT OF COLONIAL EXPANSION ON THE INDIGENOUS PEOPLES: THE RESULTING MODUS VIVENDI

4.01 In this Part, the colonial expansion into the part of Africa with which this dispute is concerned, its effect on the organized powers and indigenous tribes of the region, and the resulting modus vivendi are considered. The discussion is structured in the following way: Chapter I will give an account of the situation in North Africa and the Sudan[1] in the 19th Century when the colonial expansion began. It will describe the background and evolution of the Arab States and Sudanic Kingdoms that the European powers found in North Africa and in the Sudan at that time. Chapter II will take up the European colonial expansion in the region from the 1870s to 1914. The Chapter is divided into six Sections which, after certain preliminary considerations (Section 1), take up, in turn, the French military advances up to 1900, with Lake Chad as the main objective, and the reactions of Great Britain and the Ottoman Empire to the French advances (Section 2); the organized powers and groups that the French forces encountered at that time - the Ottomans and the indigenous tribes under Senoussi leadership and authority (Section 3); the French wars against the organized groups and the limited extent of the French presence in the area up to 1912 (Section 4); the 1908-1913 interlude during which the Ottoman forces occupied most of the borderlands and the French authorities reached certain understandings with the Ottomans and the Senoussi (Section 5); and the war between Italy and the Ottoman Empire, 1911-1912, and the subsequent Treaty of Ouchy (1912), and its consequences for the region, which included the Ottoman withdrawal and the renewed French war against the indigenous Senoussi tribes (Section 6). Chapter III sets out the conclusions to which the events described in Part IV point.

4.02 It is apparent that the French wars against the Senoussi tribes had only one objective: to secure the regions around Lake Chad and to the south where the French felt it worthwhile to settle. With the outbreak of World War I, the French withdrew from the borderlands; when French military forces returned in 1929, it was once more to protect French interests elsewhere, "le

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[1] See, para. 3.51, above, and related note, for a definition of "the Sudan".

Tchad utile" and the other neighbouring French colonies - not to settle and colonize the borderlands regions. The indigenous peoples, the Senoussi tribes, were never subjugated or "pacified"; and their title to the borderlands was never acquired by the French. The Senoussi leadership may have been forced to withdraw to the north again after the French had destroyed their zawiyas and confiscated or destroyed the libraries of the zawiyas, which had been centres for the teaching of Islam and for bringing Arab culture to this remote area as well as focal points of administration and arbitration. But the Senoussi tribes remained to continue the resistence to foreign occupation of their lands. And in the period after World War I, the focus of this fight to defend their lands shifted to the north against the Italians. Once more the leadership of this resistence was the Senoussi and the fight was conducted by the Senoussi tribes.

4.03 Certain other points, some of which have already been mentioned, will emerge below from the discussion of this period. First, there existed in both the Sahara and the Sudan regions of North Africa politically organized societies, closely linked by transaharian trade and cultural contacts. These ties had exhibited over many centuries a particular strength and continuity between Tripolitania and Cyrenaica and the political organizations existing in the neighbourhood of Lake Chad and the Eastern Sudan. This was among the reasons that this region south to Lake Chad and beyond, embracing the north/south caravan routes, had been considered by the Ottoman Empire as the "hinterland of Tripolitania". On the eve of the colonial expansion, there existed in this region political entities and organized societies such as the Sudanic Kingdoms or Sultanates; tribes or confederations of tribes, like the Tuareg and the Toubou; and the Awlad Sulaiman and other Arab tribes that had penetrated south from Tripolitania and Cyrenaica. In the face of the colonial expansion, there came to this region an organizing force to mobilize the local societies against the French colonial onslaught. This was the Senoussi Order, whose activities extended from the Mediterranean to Kanem and Ouadaï. All of these groups - but particularly the Senoussi - helped to secure the continuity of human relations across this vast region of the Sahara and the Sudan.

4.04 Second, European politics and colonial rivalries provoked the partitition of Africa from the 1870s to the 1910s; most of the lines of division of African territory were drawn in a sort of game of give-and-take played in the Foreign Offices of the leading European Powers. Such lines reflected European aims and diplomatic strategies and, out of sheer arrogance and ignorance, disregarded the existing titles to African territory of its organized peoples. In particular, the Anglo-French agreements between 1890 and 1899 established lines purporting to divide "spheres of influence" between these two Powers, carving up the region on paper for the purposes of European colonial expansion[2]. But the new and artificial map failed to reflect the existing rights of its inhabitants.

4.05 Third, the "sphere of influence" given to France was vigorously protested and refused recognition by the Ottoman Empire, starting in 1890, since it transgressed the hinterland of Tripolitania. Subsequent French military incursions into the region of Lake Chad, as the present Century began, were opposed by the organized peoples of the region under Senoussi leadership and direction. For its part, the Ottoman Empire established new military posts in the region in 1908 and afterwards, and it was agreed between the Ottoman Empire and France to open negotiations in order to define the southern limits of the vilayet of Tripolitania and its hinterland. The war between Italy and the Ottoman Empire put an end to these discussions.

4.06 Fourth, the historical evidence shows that when the Anglo-French agreements from 1890 to 1899 were concluded neither France nor Great Britain had any effective authority over the African territories and peoples included in their respective "spheres of influence" and, indeed, no meaningful presence at all in most of the region. When France created the "circonscription spéciale dite 'territoire militaire des pays et protectorats du Tchad'" in September 1900, within what were then called the French Congo Territories, it had neither effective authority nor any real presence in the areas surrounding or extending north of Bir Alali in Kanem or in the regions of Borkou, Tibesti, Ouniangu, Erdi and Ennedi. At the moment of entry into force of the Treaty of Ouchy in 1912 between Italy and the Ottoman Empire, when the Sultan in the Firman made part of the treaty arrangements give full autonomy to the populations of Tripolitania and Cyrenaica, the local peoples under Senoussi leadership and the Ottoman military forces had effective control of the territories north of a line running east from Ziguei in Kanem to the region of Oum Chalouba and Arada (15° N latitude) (Map No. 29). A modus vivendi was reached at the time accepting this as a de facto boundary between the French forces and the Senoussi and Ottomans.

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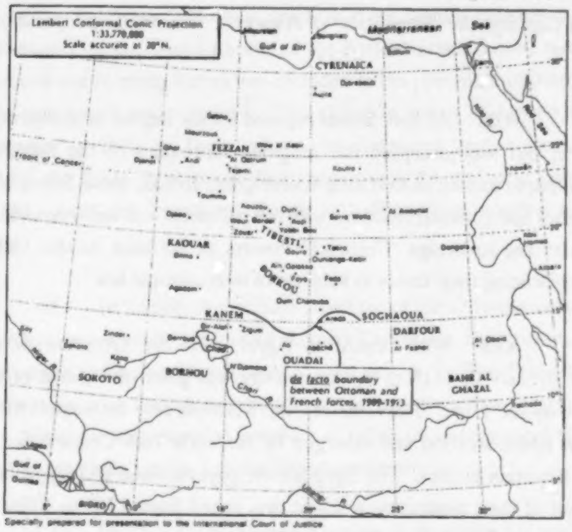
[2] These agreements are taken up in detail in Part V, below.

Map No. 29



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CHAPTER I. THE ARAB STATES OF NORTH AFRICA AND THE SUDANIC KINGDOMS IN THE 19TH CENTURY

Section 1. The North African Arab States

4.07 With the exception of Morocco, the Arab States of North Africa that existed at the start of the 19th Century, from Egypt to Algiers, were a consequence of the Ottoman Empire's advance into the Mediterranean region of North Africa during the 16th Century, putting an end to the Spanish expansion along the coasts of this region[3]. But they also were the result of the subsequent evolution in Ottoman rule that led to the North Africa States as they existed in the 19th Century: the "Regencies" of Algiers, Tunis and Tripoli, and on the east, Egypt.

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[3] The Spanish presence at Tripoli lasted from 1510 to 1530, Tripoli being incorporated into Sicily, which was a Spanish possession. Spain ceded Tripoli and Malta to the Maltese Order, which in turn was expelled from Tripoli in 1551 by the Ottoman forces. On the Spanish conquest of Tripoli, see, Rossi, E.: Storia di Tripoli e della Tripolitania dalla conquista araba al 1911, Roma, Istituto per l'Oriente, 1968, pp. 109-119.

4.08 All four States enjoyed a wide degree of independence from the Porte: but they accepted the religious supremacy of the Sultan-Caliph in Constantinople as well as Ottoman sovereignty. In fact, these States had entered into treaties and consular relations with other Powers and had even made war and peace with the sovereign "Christian" Powers as far back as the 16th Century, clearly evidencing their status as subjects of international law.

4.09 With regard to Egypt, with the Ottoman defeat of the Mamluk dynasty in 1515-1516, the country was given the status of a province governed by the Porte. Nevertheless, the Mamluk elite insinuated itself into the Ottoman administration and emerged by the early 16th Century as the leading force in Egyptian politics. The Egyptian viceroys received de facto recognition by the Sultan of their autonomy, a status that lasted from 1768 to 1786. After the interval of the French occupation (1798-1805), a new dynasty emerged under Muhammad Ali and his successors. This led to Egypt's expansion into Arabia, the African coast of the Red Sea and Northern Sudan.

4.10 Under Ismail (1863-1879), who obtained the special title of Khedive from the Porte, the Suez Canal was opened (November 1869). Although intended to turn Egypt into a modern society closely linked to European Powers, this project, quite to the contrary, led to the Khedive's financial bankruptcy, followed by forceful Anglo-French intervention in Egypt's internal affairs and, finally, to the British occupation and protectorate in 1882.

4.11 From 1536 to 1587, Algiers was ruled by Barbarossa and his successor beylerbeys, who incorporated Tunisia into Algiers in 1574. In 1587, the title of beylerbey was abolished; and the three Regencies of Algiers, Tunis and Tripoli, although by no means exactly alike, were entrusted to different pashas appointed by the Porte, as provinces of the Ottoman Empire. Their structure was military in nature, which soon led to a change in the governmental structure with the army assuming the effective power and nominating a bey to manage finances and collect taxes and relegating the pashas appointed by the Porte to essentially honorary positions.

4.12 This change further increased the autonomy of the Regencies within the Ottoman Empire, each of them dealing directly with other Powers. However, the nominal authority of the Porte continued to be recognized, and the name of the reigning Sultan was included in the preamble of international treaties concluded with other States[4]. This situation lasted in Algeria until the French conquest in 1830; in Tunis, where the Husayned beys, a local dynasty recognised by the Porte, had established themselves, the situation lasted from 1705 to 1881, when the Treaty of Bardo with France established a French protectorate.

4.13 In Tripoli, the military structure of the Ottomans established in the 16th Century ended in 1711 when Ahmed Karamanli, then commander of the cavalry, seized power and established a local dynasty[5]. The Porte accepted the new situation and recognised him and his successors as pashas. The Karamanlis, however, considered themselves as ruling an independent State that was more of an ally than a subject of the Ottoman Empire.

4.14 In 1716-1718, Ahmed Karamanli extended his authority to Fezzan, the gate-way to Central Sudan, and imposed an annual tribute more modest than that paid under Ottoman rule. He also brought Cyrenaica more firmly under Tripoli's authority, sending there young members of the ruling family. Later, under Yusuf Pasha Karamanli, the dynasty's power was consolidated and extended over much of what is now modern Libya. Direct rule was imposed over the main trading oases of Fezzan and broad plans were formulated to extend Karamanli authority across the Sahara to the Sudan in the knowledge that the State of Bornou's power had been put in jeopardy by other neighbouring States of the region[6].

4.15 In May 1835, the Ottoman Empire, alarmed by the French conquest of Algiers five years before and the increasing autonomy and strength of

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[4] See, "Les institutions publiques sous la domination turque", in Bontems, C.: Manuel des Institutions algériennes de la domination turque à l'indépendance, Vol. I, La domination turque et le régime militaire, 1518-1870, Paris, Editions Cujas, 1976, pp. 27-49; Bontems, C.: L'Empire Ottoman du XVIe au XVIIIe siècle: Administration, Economie, Société, Paris, Fayard, 1984.

[5] On the origin of Karamanlis power, see, Féraud, Ch.: Annales Tripolitaines, Paris and Tunis, Librairie Tournier, Librairie Vuibert, 1927, p. 206, et seq.

[6] Wright, Libya, Chad and the Central Sahara, op. cit., pp. 47 and 59-61.

Egypt, reasserted its direct authority in Tripoli. In a message addressed to the European consuls on 1 June 1835, Nedjib Pasha, the commander of the Ottoman forces, stated that:

> "Par la présente, nous vous donnons avis de notre arrivée ici, porteur d'ordres de la Sublime-Porte ottomane pour mettre fin aux désordres qui ont pendant si longtemps affligé ce pays, *et pour le gouverner avec ses dépendances* tant qu'il plaira à notre Auguste Maître et Souverain le Sultan Mahmoud. C'est donc à nous que vous aurez à vous adresser en toutes circonstances; soyez persuadés que, de notre côté, nous serons toujours disposés à concourir au maintien des relations d'amitié qui regnent heureusement entre la Sublime-Porte et les puissances chrétiennes[7]."

4.16 In 1835, the Ottoman government created the province or *vilayet* of Tripoli, under a *wali* or Governor, dividing it into five administrative regions or *sandjak*[8]. The situation of Ottoman Tripoli remained unchanged until 1912. Then, the Sultan granted full and complete autonomy to the inhabitants of the Tripolitania and Cyrenaica by an Imperial *Firman* forming part of the peace settlement concluded at Ouchy between the Ottoman Empire and Italy on 15 October 1912.

SECTION 2. **International Relations between the North African States and the "Christian Nations"**

4.17 The North African States were more loosely ruled by the Ottoman Empire than were other States under Ottoman sovereignty. Although in the case of some treaties concluded by the Porte with Austria and Russia in the latter part of the 16th Century and the first part of the 17th Century the Porte had acted as the intermediary in the conclusion of the commercial arrangements between those two States and the three North African States, by the 17th Century, Tripoli, Tunis and Algeria had begun to conclude many treaties with Western or Christian Powers in their own right and had received diplomatic representatives and even engaged in war[9].

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[7] Féraud, *op. cit.*, pp. 370-371. Emphasis added. (A copy of these pages is attached as *Exhibit* 22.) Ch. Féraud was Consul of France at Tripoli from 1879 to 1884 and drew largely on the archives of the French Consulate in his *Annales*, according to Rossi, *op. cit.*, p. XIX.

[8] The *sandjak* of Tarabulus al-Garb, having Tripoli as the administrative capital; the *sandjak* of Khums, comprising this town and the area of Misurata, Zliten and Sirtica; the *sandjak* of Djabal Gharian, having Iffren as administrative center and comprising the areas of Djabal Nafoussa and Tarhouna; the *sandjak* of Mourzouk, comprising the whole Fezzan; and the *sandjak* of Benghazi, comprising the whole of Cyrenaica. Each *sandjak* was ruled by a governor or *mutassarrif*. After 1879, the *sandjak* of Cyrenaica was administratively separated from the *vilayet* of Tripoli and transformed into an autonomous *mutassarrifiya*. On the organization of Libya under Ottoman rule, *see*, Larfaoui, M.: *L'occupation italienne de la Tripolitaine et de la Cyrénaique ou la naissance d'un impérialisme (1882-1912)*, Thèse, Université de Paris 2, 1978, pp. 56-63. (Pursuant to Article 50, paragraph 2 of the Rules of Court, a copy of this thesis has been deposited with the Registrar.)

4.18 Without going into a detailed examination of the relations of each of the four North African States with Western or Christian Powers[10], the case of Tripoli may be taken as generally illustrative of the situation. In the case of Tripoli, treaty relations with Great Britain were established in 1662, followed by treaties concluded in 1675-76, 1716, 1751 and 1815; with France between 1685 and 1830; with the Netherlands between 1713 and 1728; with Spain in 1784; with the United States in 1796[11]; with Sweden in 1802; and with Sardinia and the Two Sicilies in 1816[12]. Consuls from Christian Powers were sent to Tripoli starting in 1662, the English Consul having precedence over all others. Tripoli sent embassies to the European States and received their extraordinary envoys[13]. Like the European States at this time, Tripoli was frequently at war with the Christian Nations, including the 1804-1805 war with the United States of America[14].

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[9] This situation was first examined, in the XVIII Century, by Cornelius van Bynkershoek in his work, Quaestionum juris publici libri duo, Oxford, 1737, Chap. XVII, Clarendon Press: London, Humphrey Milford, 1930, 2 volumes. On the subject, see, Montmorency: "The Barbary States in International Law", Transactions of the Grotius Society, IV, London, 1929; Monlau, J.: Les Etats Barbaresques, Paris, 1964; and Mössner, J.M.: Die Völkerrechtlichespersönlichkeit der Barbareskenstaaten, Berlin, 1968.

[10] For a general account, see, the references in the preceding footnote and Verzijl, J.H.: International Law in Historical Perspective, Leyden, A.W. Sijthoff, 1969, Vol. II, pp. 389-395.

[11] According to Truyol Serra, A.: "L'expansion de la société internationale aux XIXème et XXème siècles", Recueil des Cours, Vol. 116 (1965)-III°, p. 130, "En fait, les traités furent nombreux entre les Etats européens et tous ces Etats d'Afrique du Nord. Et lorsque les Etats-Unis d'Amérique eurent conquis leur indépendance, parmi les premiers traités signés après 1783. Il y a eu un avec le Maroc le 25 janvier 1787 ... un avec Tripoli le 4 novembre 1796, et un avec Tunis en août 1797".

[12] Verzijl, op. cit., p. 390. These treaties dealt with peace and friendship, commerce, the position of Consuls, restitution of prisoners, the conduct of privateers, the observance of neutrality, assistance to ships and the shipwrecked.

[13] Among many others in the 18th-19th Centuries were the embassies of 1728 to the Netherlands, received in solemn audience by the "Staten-Generaal" (see, Féraud, op. cit., p. 233) and to France in 1729 and 1775, (ibid., pp. 235-236 and 262).

[14] The Tripoli-United States war ended by the Treaty of 3 June 1805, concluded by the American chargé d'affaires, Mr. Tobias Lear; and it had consequences for Morocco-

Section 3. The Sudanic Kingdoms and their Relations with the North African Arab States

4.19 Lying along the southern shores of the Mediterranean Sea, the North African Arab States necessarily were in constant contact - whether friendly or hostile - with the European Nations north of the Mediterranean. But, Algiers, Tunis, Tripoli and Egypt, as urban and merchant societies, had neighbours to the south that were by no means of minor importance. Immediately to the south, was the Sahara desert and, beyond it, the pre-desert steppes, the Sahel-Savanna region[15]. The Mediterranean Powers had vague (and perhaps romantic) notions of another inhabited space further south - between the Senegal River and the Niger River; in the Lake Chad area; and between the Nile and the Red Sea. This space was called by the Arabs "Bilad al-Sudan", (the "Land of the Blacks") or the Sudan; and its fabled richness had fascinated the Mediterranean States for centuries.

(a) The Sudanic Kingdoms

4.20 As has been described in Part III above, the Sahara Desert was the communications link in this north/south relationship that has been a dominating factor in North Africa since its origins. The social, political and economic life of the North African Arab States from Egypt to Morocco has depended on this north/south interchange. The ancient, much-used routes across the Sahara were the means of inter-communication between the Mediterranean States of North Africa and the Sudan. It was a two-way flow between the politically - organized States with their trading societies, on the north of the Sahara, and the regions to their south. For from the early Middle Ages, a series of large, powerful States, Kingdoms, or Empires had existed "... in the narrow, relatively well-watered country lying between the Sahara and the tropical forest-belt, and extending without a break from the Atlantic in the east to the Red Sea in the west", the Sudanic States[16]. Among them, were the ancient Kingdom of

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United States relations, the former also opening war against the latter in solidarity with Tripoli. On the matter, see, Féraud, op. cit., pp. 318-320.

[15] As indicated by Wright, Libya, Chad and the Central Sahara, op. cit., p. 4: "Most of the Sahara is lifeless, but the steppes have supported pastoral, warlike peoples".

[16] Wright, Libya, Chad and the Central Sahara, op. cit., p. 30. (A copy of this page is attached as Exhibit 16.)

Tekrun on the Senegal River; ancient Ghana and Mali, as well as the Shongai Empire, in the vicinity of the Niger River; the Hausa-Barkai States; surrounding Lake Chad, the Kanem and later the Bornou Empires; and to their east and southeast, the Baguirmi, the Ouadaï and the Darfour, extending to the Nilotic Sudan Powers (Map No. 30)[17].

4.21 At their origin, the Sudanic Kingdoms emerged from local societies, each having a culture of its own; but later their prominence was due to their geographical position on the southern edge of the Sahara and the opportunity for trade thus opened up. Islam and the Arabic language coming from the north of Africa formed part of their identity. In between the urban and merchant societies of the States both to the north and to the south of the Sahara were the partly Islamised tribes of nomads and semi-nomads, extending from the Tekna in southern Morocco to the Awlad Sulaiman in Kanem; and in the central part of the Sahara, the Tuareg and the Toubou, covering a large area of what is today northeast Nigeria and the Libya-Chad borderlands.

4.22 In the contacts and relationships between the peoples and political societies on the northern and southern reaches of the Sahara, trade was the main factor since ancient times. North Africa and the Sahara were the intermediaries, for they had never been prime sources of raw materials or manufactured goods. The Mediterranean ports of North Africa and the oases of the Sahara were the points of communication and exchange between the two main markets: on one side, the markets of Europe and the Levant; on the other, the markets of the Sudan[18].

(b) The North/South Trade Routes

4.23 As has already been brought out in the earlier discussion of geography[19], essential to this trans-Sahara interchange and trade were the

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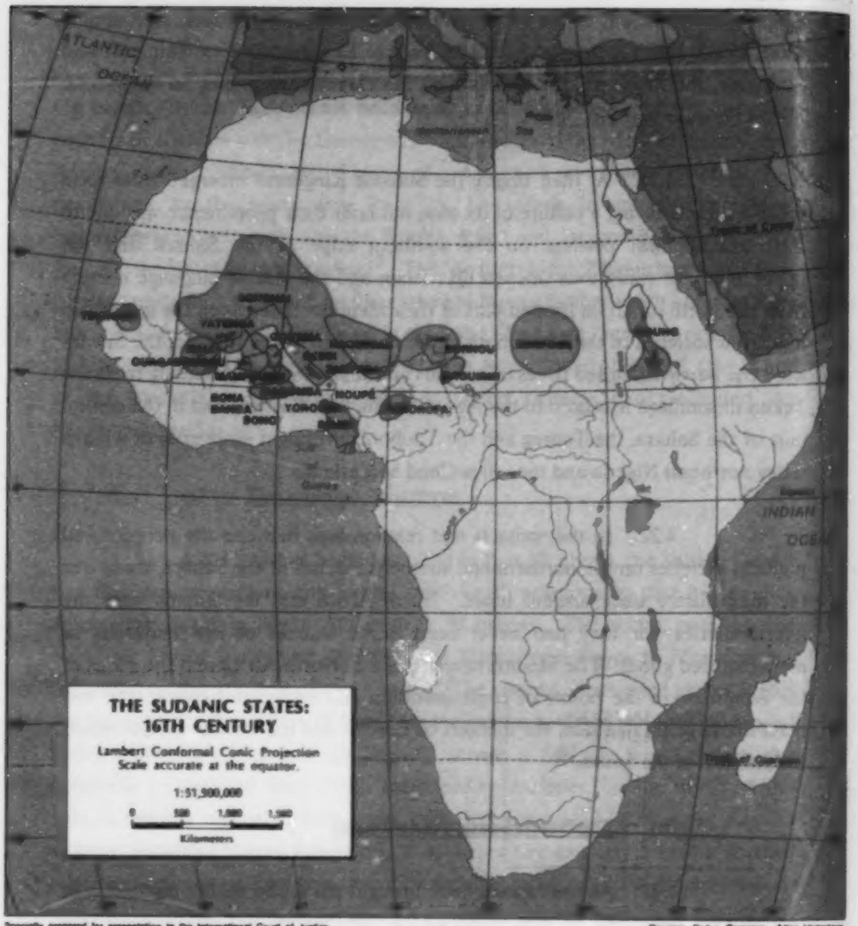
[17] There are certain minor differences in the spelling of some of these names as between the text and the maps.

[18] Wright, Libya, Chad and the Central Sahara, op. cit., p. 5. See, also, Fisher, A.G.B., and Fisher, H.J.: Slavery and Muslim Societies in Africa: The Institution in Saharan and Sudanic Africa and the Trans-Saharan Trade, London, C. Hurst, 1970; Wickins, P.L.: An Economic History of Africa from the Earliest Times to Partition, Cape Town, Oxford University Press, 1981; Boahen, A.A.: "The Caravan Trade in the Nineteenth Century", (in Journal of African History), Vol. III, 1962, p. 2, et seq.

[19] See, paras. 3.12 and 3.54, above. See, also, Map No. 21, appearing at para. 3.54.

Map No. 30



THE SUDANIC STATES: 16TH CENTURY

Lambert Conformal Conic Projection
Scale accurate at the equator.

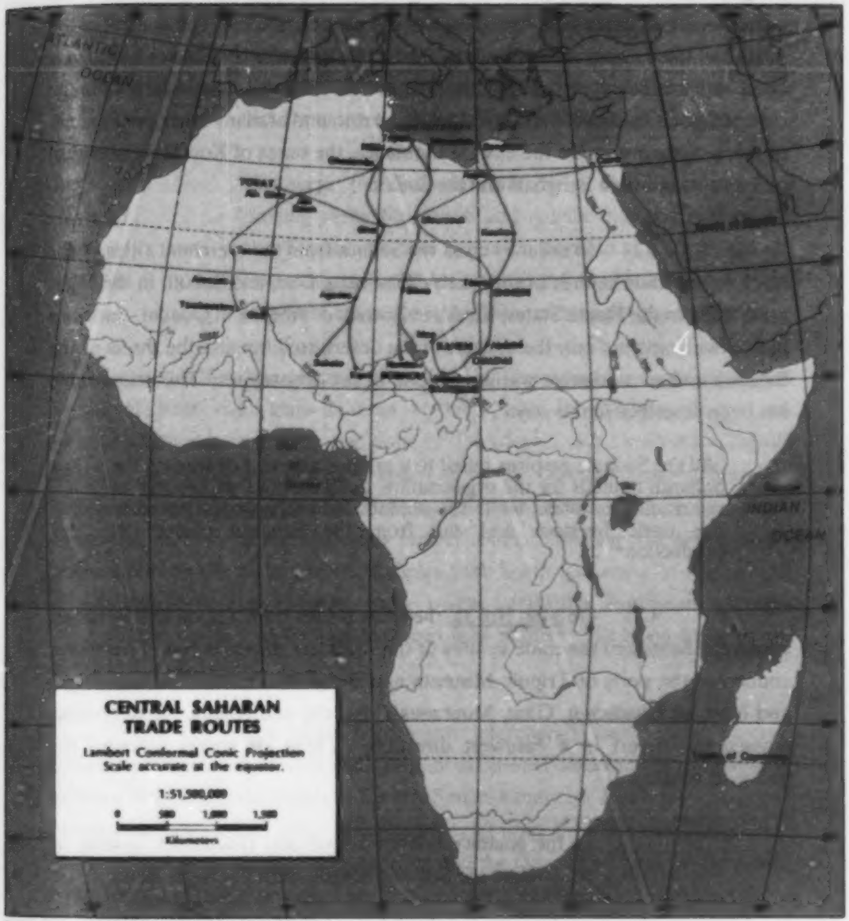
1:51,500,000

0 500 1,000 1,500
Kilometers

Specially prepared for presentation to the International Court of Justice

Source: Duby, Georges, Atlas Historique
Larousse, 1987, p. [illegible]

Map No. 31


ATLANTIC OCEAN
TUWAT
INDIAN OCEAN
CENTRAL SAHARAN TRADE ROUTES
Lambert Conformal Conic Projection
Scale accurate at the equator.
1:51,500,000
0 500 1,000 1,500
Kilometers

Specially prepared for presentation to the International Court of Justice

caravan routes and, along them, the scarce, widely dispersed oases and wells, whose locations determined the course of the caravan routes. The control of the oases and the maintenance of wells by the States bordering the Sahara had always been both an economic and a political imperative. This was particularly so in the case of Ghat, Ghadamès and Mourzouk in Fezzan and of many other points south of there on the west. On the east, in Cyrenaica, the oases of Koufra were critical to the route between Benghazi and the Sudan.

4.24 In order to cross the Sahara from the merchant cities of the north to the trade centres of the south - Timbuktu, Gao, and Sokoto in the Niger area, Kano in the Hausa States, Kouka in Bornou or Abéché in Ouadaï - caravans had to overcome not only the dangers of the desert itself but also the threat of the Saharan nomads and other warlike peoples of the pre-steppes. This relationship has been described in this way:

> "All the Sudanic empires relied to a greater or lesser degree on the Saharan nomads for the organization, guidance and 'protection' of the trading caravans, while the nomads themselves contributed to this trade livestock and salt from the Saharan centres of production[20]".

4.25 On Map No. 31, the trade routes from Tripoli and Benghazi across the Sahara to the trade centres of the south are drawn in red. Five routes connected the ports of Tripoli, Misurata and Benghazi with the Sahara villages and oases of Ghadamès, Ghat, Mourzouk (Murzuk) and Augila. A sixth route crossed the desert in a east/west direction. These six routes followed the following courses:

- To the southwest, from Tripoli and Ghadamès, passing by the Tuat, to the Sudanic Kingdoms of the Niger Bend;
- North/south, from Tripoli, Ghadamès, Ghat and Agades, to Gao, Sokoto and Kano;
- North/south, from Tripoli, Mourzouk and Bilma to the Kingdom of Bornou and areas surrounding Lake Chad;

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[20] Wright, Libya, Chad and the Central Sahara, op. cit., p. 40, referring to Mauny, R.: Tableau géographique de l'ouest Africain au Moyen age, Dakar, I.F.A.N., 1961. (A copy of this page is attached as Exhibit 16.)

- North/south, from Tripoli and Misurata, passing by Mourzouk to the Ouadaï Kingdom and Baguirmi;

- North/south, on the east, from Benghazi, passing by the Koufra oases, to Borkou, Ennedi, Kanem and Ouadaï; and

- East/west, the Saharan route from the Touat to Cairo passing along Mourzouk and Augila thus connecting with the Tripolitania and Cyrenaica ports to the north and the routes to the Sudanic States to the south; this also was the pilgrim route taken by Muslims making the Haj to Mecca.

4.26 The preeminent position of Tripoli - and including Benghazi somewhat later - in trans-Saharan contacts with the Sudanic States was geographically determined by the ports of Tripolitania and Cyrenaica - Tripoli, Misurata, Benghazi and Derna - as well as by the Ottoman control, exercised largely through the vilayet of Tripoli, and, in turn, through Ghadamès, Ghat, Mourzouk and Augila and the oases further south. This fact had always had a major effect on the history of the peoples both north and south of the Sahara, closely linked by the Saharan trade routes, until the European intrusion attempted to break it apart. As has been seen above[21], the main trade routes survived this onslaught.

4.27 The close north/south interchange along these caravan routes is so important a fact in this case that additional discussion of the relations between Tripoli and the States of Central Sudan is merited. But it must be borne in mind that influences other than commercial ones flowed south along these routes. These were the doctrines of Islam and the cultural heritage of the Arabs, which helped to forge the close links between north and south.

4.28 There had been a trade route across the Central Sahara, from the Mediterranean coast of Tripolitania to Lake Chad via Fezzan and Kaouar, from at least the First Millennium B.C. Routes linking Northwest Africa to Western Sudan were probably as old, having been arteries of the West African gold trade known to the Carthaginians[22]. However, the western routes declined in the late Middle Ages as the source of West African gold declined; the West Sudanic states (Ghana, Mali and then Songhai) weakened; and European seaborne trade on the west coast became too competitive. The Central Saharan routes (the main arteries of the slave trade) gained from this loss of competition and from the rise of the Hausa States and Bornou.

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[21] See, para. 3.72, et seq., above.

4.29 Two main commercial routes developed (Map No. 31). The first of these caravan routes, from Bornou to Tripoli, started at Kouka in Bornou and crossed the Sahara passing through Bilma and Mourzouk. This had been a principal trade route from early times. The French consuls at Tripoli in the 17th Century gave detailed accounts of the traffic at that time[23]. Until the mid-19th Century, slaves were the main object of commerce, coming from Bornou and Baguirmi and the Hausa States. The profits from the slave trade were an essential economic element for Bornou, enabling it to acquire arms and other goods from Tripoli; and under the Karamanli (1711-1835), the economic benefit to Tripoli was to enable it to finance the Mediterranean corsairs. It is reported that-

> "... a recession in the slave trade resulting from a lack of security on the desert roads resulted in less corsair activity, a fall in revenues, and little or no pay for the janissaries, the troops entrusted with the protection of the trade routes[24]".

4.30 The security of trade routes was thus vital to the States on both sides of the Sahara. A second requirement to the functioning of these routes was the maintenance of wells. It has been said that the free flow of trans-Saharan trade was so important to the 13th Century Kanem Empire that:

> "The protection of wells and staging-posts as far north as possible was thus a prime objective of Kanem's foreign policy[25]".

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[22] It has been said that "compared with the staples of slaves and gold, the other Sudanic trans-Saharan exports were quite modest in volume and value", including ivory, ostrich feathers, materials for making perfume like civet, kola nut, receiving in turn from the north mainly metal goods, arms and glassware. See, Wright, Libya, Chad and the Central Sahara, op. cit., pp. 42-43 and the references there to other sources. (A copy of these pages is attached as Exhibit 16.)

[23] See, Wright, Libya, Chad and the Central Sahara, op. cit., p. 46.

[24] Ibid., pp. 48-49. (A copy of these pages is attached as Exhibit 16.)

[25] Ibid., p. 39. (A copy of the page is attached as Exhibit 16.)

The authorities in Tripoli had the same objective, as shown by Nachtigal's account of his travels in 1869: after leaving Mourzouk and Tejerri, "the most southern inhabited place in Fezzan", on June 22 of that year, Nachtigal arrived at the well of Bir Meshu, the only watering station between Tejerri and Toummo. He wrote:

> "The sanding of this well is becoming more frequent year by year. Early governments in Fezzan made it their business to keep it in good condition because of its importance for travellers. On their frequent journeys to the south, el-Muqni and Abd el-Jlil had learnt to appreciate the need for this; Hassan Pasha, an Arab, the most brilliant of the governors of Fezzan since the Turks took over, had himself once sent fifty men to have the well walled in ...[26]".

4.31 In the 1850s, another caravan route further east started to increase in importance: that connecting Abéché in Ouadaï to Benghazi through the Tekro and the Koufra oases and Augila. This route also permitted the connection between Cyrenaica, Ennedi, Borkou and Kanem, by a route passing through Tekro to Gouro, Aïn Galakka, Bir Alali (Mao) south to Baguirmi (Map No. 21 at paragraph 3.21 above).

4.32 The opening of the Benghazi-Abéché route was the work of the Mijabra tribe from Cyrenaica, who were active in trade with Bornou. But the route's main development occurred only after 1856, when the Mijabra became closely associated with the Senoussi, whose power and influence lay behind the active trade along this eastern route passing through Koufra. Its height as a flourishing trade route was between 1875 and 1909[27]. Thereafter it was progressively disrupted by the French conquest of Ouadaï and later by the Italian-Turkish war of 1911-1912. The economic importance of this axis of communication between Cyrenaica and the lands surrounding Lake Chad - as well as its security - was mainly due to the Senoussi presence as a controlling force all along the route[28], as well as their links with the Mijabra and the other local tribes controlling the areas[29].

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[26] Nachtigal, op. cit., Vol. II, p. 217. (A copy of the page is attached as Exhibit 18.)

[27] Cordell, D.: "Eastern Libya, Wadai and the Sanusiya: a tariqa and a trade route", Journal of African History, Vol. XVIII, 1977, p. 22, et seq.

4.33 It will be recalled that the oases of Koufra, through which this caravan route passed on its way south from Benghazi, were where the Order moved their headquarters to in 1895[30]. The Koufra oases were a staging place for caravans from the north, as well as a stopping place, often for a month, for caravans from the south[31]. At the time, the Senoussi had close ties with the Sultan of Ouadaï, as well, who was one of the leading powers in the area east of Lake Chad[32].

4.34 Senoussi expansion into Ennedi and Borkou took place along the trade routes, on which *zawiyas* were built starting in the 1870s as far south as Bir Alali and Oum Chalouba. The Senoussi presence was an essential factor in the maintenance and security of these routes. New wells were dug or old wells repaired. The high prestige and influence of the Senoussi Order amongst the tribes - the Mijabra and Zuwaya of Cyrenaica[33], the Toubou of Tibesti, and the Awlad Sulaiman and Tuareg of Borkou and Kanem - assured the protection of this trade, sometimes even persuading caravan robbers to restore stolen goods. While they were organizing local societies and giving them a certain unity, from Cyrenaica to the Lake Chad lands, the Senoussi at the same time provided merchants with a common legal, social and commercial system, even a postal service[34]. The Senoussi acquired a strong social influence over these tribes, for whom they performed an important conciliatory and arbitral function. At the same time, they were able to finance the expenses of the Order by levying tolls, leasing storage space and receiving gifts from merchants or local potentates[35].

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[28] *Ibid.*, pp. 21-36.

[29] On links between the Senoussi and the Mijabra, *see*, references given by Ciammaichella, G.: *Libyens et Français au Tchad (1897-1914)*. *La Confrérie Senoussie et le commerce transaharien*, Paris, Editions du Centre National de la Recherche Scientifique, 1987, pp. 35-36.

[30] *See*, para. 3.57, above.

[31] Ciammaichella, *op. cit.*, p. 32.

[32] On the relations between the Sultans of Ouadaï and the Senoussi, *see*, Wright, *op. cit.*, *Libya, Chad and the Central Sahara*, pp. 86-88.

[33] The Zuwaya were in the oases of Koufra from the 18th Century on, controlling the caravan route. Ciammaichella, *op. cit.*, pp. 36-37.

[34] Wright, *Libya, Chad and the Central Sahara*, *op. cit.*, p. 97.

CHAPTER II. THE EUROPEAN COLONIAL EXPANSION IN THE REGION FROM THE 1870s TO 1914

SECTION 1. Preliminary Aspects

4.35 With the exception of the Spanish possessions on the west coast of North Africa, the European presence in North Africa in the 1870s was limited to Algiers, conquered by France in 1830. Only certain limited coastal points were in British or French possession in West Africa between what is now Senegal and Nigeria[36]. Then the situation started to change.

4.36 As to the lands surrounding Lake Chad, the change occurred slowly. Although an enormous French "sphere of influence" in Saharan Africa had been recognised by Great Britain in the bilateral agreements of 1890, 1898 and 1899, French forces did not reach their central aim, Lake Chad, until 1900. They were then obliged to fight against Rabbah and his successors in Bornou, from 1900 to 1901; then against the local peoples organized by the Senoussi in Kanem and against the peoples of Ouadaï from 1901 to 1909, a war that was resumed to the north in 1913 when the French destroyed the great zawiya at Aïn Galakka (in Borkou). French forces did not reach Bardaï in the Tibesti massif until 1914, withdrawing therefrom the same year and not returning to the Tibesti region until 1929.

4.37 The European colonial expansion into Africa began with exploration. When the Association for Promoting Discovery in the Inland Parts of Africa was created in London in 1788, it was stated that notwithstanding the already acquired knowledge "... on the coast and borders of that vast continent, the map of its interior is still but a wide extended blank (where the) names of some unexplored rivers and of uncertain nations" had been depicted[37]. By the 1870s two major explorations had been conducted: one from the West African coast, the other from Tripoli. These explorations had the same dual objective: the geographical objective of discovering whether the Niger River was linked via Lake Chad to the Nile; and the economic objective of acquiring more knowledge about the Sudanic societies in order to evaluate the European prospects of trade with these lands.

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[35] Ibid., see, also, Ciammaichella, op. cit., pp. 19-24, and the references there to consular reports and other sources.

[36] In fact, the British were in Bathurst (Gambia) and Freetown (Sierra Leone), and in some coastal points of the Gold Coast like Shama, Emina and Accra and at Badagri and Lagos in Nigeria. The French penetrated most deeply in the Senegal River area, but also held coastal points in Conakry, Assinie and Grand Bassam (Ivory Coast).

4.38 At first, Tripoli was considered as the best point of entry for exploratory expeditions to the inland regions of Africa; and the Karamanli were largely cooperative. Yusuf Pasha Karamanli favoured the attempts made at the end of 18th Century[38], and he afforded protection to the British Bornou Mission of 1822-1825, which first explored Bornou and Hausaland. The British were well aware that Tripoli oversaw the trade routes to the south and had real influence in the Sudan[39]. In fact, it was not possible for European travellers to venture south into the desert and the Sudan beyond with any assurance of safety without advance clearance from Tripoli, which maintained a tight control over the routes to the south.

4.39 The exploration of lands surrounding Lake Chad from Tripoli was completed by the Central African Mission in 1850; Bornou and the Hausa States were visited, with expeditions being made as far as Sokoto and Timbuktu[40]. In addition, the travels of explorers between Tripoli and the Sudan by men such as Gerhard Rohlfs, Gustav Nachtigal and Hanns Vischer, between 1866 and 1910, added to the knowledge of the area and its peoples. These remarkable explorers were sometimes misled in their perceptions, however, since they were observing the places and peoples as non-Muslim Europeans who had little prior familiarity with the desert and the habits and way of life of desert tribes.

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[37] Quoted by Wright, in Libya, Chad and the Central Sahara, p. 56. (A copy of this page is attached as Exhibit 16.)

[38] On the attempts by Simon Lucas, Fredrick Hornemann, Lyon and Belford, see, Wright, Libya, Chad and the Central Sahara, op. cit., pp. 56-64.

[39] The British Consul at Tripoli, Mr. Warrington, evaluated the effectiveness of Karamanli influence in the Sudan by observing that the road from Tripoli to Bornou was "as safe as the road from London to Paris". See, Wright, Libya, Chad and the Central Sahara, op. cit., p. 62.

[40] Barth: op. cit..

4.40 Nevertheless, the endeavours of the Central African Mission had an important consequence in pointing out "the possibility of opening up a shorter and more practical route from the south to the rich markets of Hausaland and Bornou[41]". This was through the Niger-Benue River system rather than from Tripoli. As a result, explorations into the Sudanic inland were to begin from points on the West African coasts; and by the 1860s it was apparent to the British - though not yet to the French - that this route was safer and swifter than crossing the Sahara from Tripoli[42]. Not surprisingly, the Anglo-French colonial rivalry, as well as their colonial expansion, started in West Africa in the 1870s, supplemented in due course by the German presence in Togo and in Cameroon in 1884. The travels of a French mission under the command of Captain Monteil between 1890 and 1892, from Senegal to Niger and then to Sokoto and Bornou, returning by way of Bilma, Mourzouk and Tripoli, charted the course of future French colonial expansion[43]. By 1898, European Powers had staked out colonies over all of West Africa with the exception of Liberia.

4.41 A great deal has been written about the origins and the development of the European scramble to partition and occupy African territory between 1870 and 1914. For the purposes of this case, only some of this story is of importance. Two preliminary points should be mentioned before proceeding to consider the colonial expansion in the regions falling within the General Setting of this dispute.

4.42 The first point is that the European colonial expansion into Africa - and, in particular, into the lands surrounding Lake Chad - was carried out within the context of the European politics and rivalries of the Bismarck era, which led ultimately to World War I. The treaties and agreements amongst European States concerning African territory were closely linked to this background.

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[41] Boahen, A. A.: Britain, the Sahara and the Western Sudan, 1788-1861, Oxford, Oxford University Press, 1964, pp. 211-212, quoted by Wright, Libya, Chad and the Central Sahara, op. cit., p. 69. (A copy of this page is attached as Exhibit 16.)

[42] As a consequence, Great Britain's economic objectives shifted from Tripoli, where it had opened Vice-Consulates at Mourzouk (in 1843) and Ghadamès (in 1850), to West Africa, the two Tripolitanian Consulates being closed in 1860-1861.

[43] Abadie, J. Cl. and F.: Sahara-Tchad (1898-1900) Carnet de route de Prosper Haller médecin de la mission Foureau-Lamy, Paris, L'Harmattan, 1989, p. 24. The authors stated that after Capt. Monteil's travels of 1890-1892: "A partir de ce moment-là le lac Tchad allait être l'objet de diverses convoitises. Le terrible Rabah allait s'emparer de ses rives, et toute une volée d'officiers et d'explorateurs français allait s'employer à le déloger pour coloniser cette plaque tournante de l'Afrique." (A copy of this page is attached as Exhibit 23.)

4.43 For example, the French-Italian rivalry in North Africa was greatly heightened by the French take-over of Tunis in 1881. Italy reacted to French expansion by proposing that there should be included as a *casus foederis* in the second secret Treaty of Triple Alliance, (concluded on 20 February 1887) the event of an occupation by France of other North African territories and, in particular, occupation of the *vilayet* of Tripoli. Germany accepted the Italian proposal, incorporating it into a separate treaty with Italy[44].

4.44 The *second* point to bring out is that in a large number of cases the European Powers agreed among themselves over the division of areas of Africa before they had any kind of effective administration or meaningful presence in the areas being divided - in fact, at a time when they did not even know what they were dividing up[45]. This practice started with the Anglo-German Agreement of May 1885 and was rapidly followed by many other treaties, conventions or declarations concerning African territories[46], among them the Anglo-French Declaration of 1890 and Convention of 1898, and the Anglo-French Additional Declaration of 1899, which are examined in Part V.

4.45 The treaties establishing "spheres of influence" were not at all similar to, and certainly did not have the same legal effects, as treaties establishing boundaries. A "boundary" presupposes two organized political communities exercising State functions on either side of the line. This was not the case in most of the partitions of African territories. They were concluded before any effective administration or even presence had been established by the European Powers in the area.

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[44] On the negotiations between Italy and the Triple Alliance in 1897, 1891 and 1902, *see*, Larfaoui, *op. cit.*, pp. 343-357.

[45] *See*, Lord Salisbury's famous remark quoted in para. 3.01, above.

[46] On this practice, *see*, Lindley, M.F.: *The Acquisition and Government of Backward Territory in International Law*, London, McMillan, 1926; Uzoigwe, G.N.: "Spheres of Influence and Doctrine of the Hinterland in the Partition of Africa", *Journal of African Studies*, 1986, p. 183; and Shaw, M.N.: *Title to Territory in Africa, International Legal Issues*, Oxford, Oxford University Press, 1986, pp. 48-50. On the origin of the term "spheres of influence" and other related terms, *see*, McEwen, A.C.: *International Boundaries of East Africa*, Oxford, Clarendon Press, 1971, pp. 17-19.

4.46 Agreements concerning "spheres of influence" had both a negative and a positive aspect[47]. On the negative side, they were a "warning to trespassers"[48], inviting other European Powers not parties to the agreement, and without any established interest in the area, to abstain in respect of a given territory. On the positive side, they reserved to the State to whom the "sphere of influence" was attributed a future action in the territory. It was, thus, a transitional stage on the road to colonial acquisition, to be followed by agreements of "cession" of territory entered into with local chiefs, or by effective occupation if the territory was terra nullius. If such agreements affected the territorial rights of a third State - such as the Ottoman Empire or Zanzibar[49] - it was obvious that they lacked legal effect not only as to their object but also under the principle of res inter alios acta. This is borne out by the fact that further negotiations to fix boundaries did occur as to territories that had initially been covered by European "spheres of influence". A directly relevant example is that France agreed in 1910-1911 to negotiate with the Ottoman Empire to delimit the southern borders of Tripolitania, which they maintained fell within France's zone of influence. These negotiations never took place due to the war between Italy and the Ottoman Empire[50]; but the fact that the negotiations were scheduled, planning for which had begun, was a candid admission by the French Government that the spheres of influence set out in the 1890 and 1899 agreements between Great Britain and France had not created a territorial boundary opposable to the Ottoman Empire. Unlike France, Great Britain and Egypt did subsequently enter into treaties with Italy delimiting Libya's eastern frontier.

4.47 In the first period of European colonial expansion, title to African territory was sometimes claimed on the basis of the concept of hinterland, that is, the territory inland appertaining to the State that effectively occupied the coast[51]; and claims based on treaties creating simple "spheres of influence" between two European States were sought to be opposed later to third States also claiming the territory as being part of its hinterland. Like other colonial Powers, France had invoked the idea of a hinterland for territories inland from the African coasts of its colonies and possessions. French authorities at this time were seeking British recognition of the hinterland of Tunis and Algeria. In the 1890 Convention between France and Great Britain, African territories north of the Say-Barroua line were proclaimed by those two powers to form the hinterland of French Tunis and Algeria. But if Map No. 38 and paragraph 5.10 below are referred to, it will be seen that much of this territory, which extends as far east as Lake Chad, lies inland from the coast of Tripolitania, not Tunis, and certainly not Algeria. Lake Chad itself lies due south of Tripoli.

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[47] See, Rutherford, G.W.: "Spheres of Influence: An Aspect of Semi-Suzerainty", (A.J.I.L. Vol. 20, 1936, p. 300).

[48] Holdich, T.H.: Political Frontiers and Boundary Making, London, McMillan, 1916, pp. 96-97.

[49] As indicated by Shaw, op. cit., p. 49, footnote 173, the Sultan of Zanzibar protested that territory recognised as belonging to him had been allowed under a German-Portuguese treaty of 1886 to Germany. On the German answer, see, British and Foreign State Papers, Vol. 78, pp. 114-115. On the protests of Ottoman Empire in respect of the 1890 and 1899 Anglo-French Agreement as affecting its rights over the Tripolitanian hinterland, see, paras. 5.09, et seq. and 5.49, et seq., below.

[50] See, para. 5.111, et seq., below.

4.48 The concepts of hinterland and "spheres of influence" were virtually interchangeable in the minds of European Cabinets in this period. For example, in the course of the negotiations leading to the Anglo-French Convention of 1890, France objected to making a reference to the hinterland of Ottoman Tripoli, suggesting the danger of this idea in respect of a future claim by Italy "qui voudrait étendre le hinterland of Massauah jusqu'à Kassama et jusqu'au Nil". The French Ambassador in London added that "Lord Salisbury m'objecta ... que nous venions de disposer d'un immense hinterland", referring to the line drawn by the 1890 Convention[52]. On several other occasions Lord Salisbury referred to the 1890 Say-Barroua line as defining Algeria's hinterland. So it often came down to a question of semantics; the French challenging hinterland claims but in the next breath asserting claims based on an alleged sphere of influence. In the case of North African States in the 19th Century, reliance upon the concept of hinterland was common. It has been said that at the time "toute l'Afrique du Nord s'orientait économiquement et politiquement selon des bandes sud-nord, des régions sub-tropicales à la côte méditerranéenne[53]". The terms meant much the same thing in practice, although hinterland had traditionally been applied to territory lying inland from a State's coastal territory. In this sense, the Anglo-French 1890 Convention did concern a hinterland, but it was misapplied. Much of the territory concerned lay landward of coastal areas over which the Ottoman Empire had undisputed sovereignty at the time.

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[51] See, Lindley, op. cit., p. 234.

[52] Emphasis added. The French Ambassador however, replied that it was not a question of hinterland, given that the arrangement made by both countries only concerned "... des territoires qui n'intéressaient que nos deux pays et personne d'autre". M. Waddington, French Ambassador to London, to M. Ribot, Minister of Foreign Affairs, 6 August 1890. French Archives Annex, p. 1.

[53] Chapelle, J.: "Esquisse d'une histoire du Sahara occidental", 1930, quoted in I.C.J. Pleadings, Western Sahara, Vol. IV, p. 208.

4.49 The close relations and cultural and religious ties that had existed for centuries between Tripoli and the regions adjoining Lake Chad and to its south and east, as well as the economic importance of the caravan trade for Tripoli and its control of the caravan routes, provided a solid basis for the Ottoman hinterland claims of 1890 and 1899. In contrast, when "spheres of influence" were allocated between France and Great Britain over African territory by the Anglo-French agreements of 1890, 1898 or 1899, neither the French nor the British could claim any link at all or even any previous contacts with those territories. They were, quite simply, the objective of British and French colonial interests; they were lines drawn on maps virtually in total ignorance of the lands or the peoples.

4.50 This game of give-and-take was played by the European Cabinets in disregard of the rights to territory of third States, as discussed above, or of the indigenous people . How, it may be asked, could such agreements between European States affect rights and titles to territories held by the organized indigenous peoples and the Ottoman Empire at the time of the colonial expansion? In the Western Sahara case, the Court gave a clear answer to this question in addressing the request of the U.N. General Assembly for a determination as to whether the territory in question was terra nullius at the moment of Spanish colonization. The Court found that it would be possible to acquire title by occupation-

> "... only if it were established that at that time the territory belonged to no-one in the sense that it was then open to acquisition through the legal process of 'occupation'.
>
> Whatever differences of opinion there may have been among jurists, the State practice of the relevant period indicates that territories inhabited by tribes or people having a social and political organization were not regarded as terrae nullius. It shows that in the case of such territories the acquisition of sovereignty was not generally considered as effected unilaterally through "occupation" of terra nullius by original title but through agreements concluded with local rulers ... ."

And the Court added-

> "... such agreements with local rulers, whether or not considered as an actual 'cession' of the territory, were regarded as derivative roots of title, and not original titles obtained by occupation of terrae nullius[54]".

4.51 It follows that "socially and politically organized tribes and peoples" had a title to their own territories, according to international law at the time of colonial expansion. This is confirmed by the Court's reference to the "legal ties" between the peoples of Bilad Shinguitti and the territory of Western Sahara[55]. A fortiori, agreements among European States allocating "spheres of influence" could have "no legal effect as regard the African populations". Even if thereafter further steps were taken to occupy the region, absent an agreement with the local rulers, such action would not confer title.

SECTION 2. The Colonial Expansion in the Region: 1870-1900

(a) The Lake Chad Area as the Main European Colonial Objective

4.52 As indicated above, France's conquest of Algiers had been completed by 1830; but French control of Algerian territory came much later. There was first the war with Abdelkader (1839-1847), then the Kabylia (between 1870 and 1871), and, finally, the Saharan Tuareg opposition. France occupied Tunis after the Treaty of Bardo of May 1881, which made Tunis a French protectorate. This was followed by Great Britain's occupation of Egypt, which became a British protectorate in September 1882, a situation not accepted at first by France, given its economic interest in Egypt. The resulting Anglo-French colonial rivalry in North Africa did not end until the 1904 "Entente Cordiale". Elsewhere in Africa, by the end of the 1870s, France and Great Britain were already on the march, notably in West Africa, where an Anglo-French colonial rivalry also emerged. The objective of both was the Sudanic countries.

4.53 The arrival in the French colony of Senegal of Colonel Brière de l'Isle as Governor in June 1876 marked the start of France's main thrust of colonial expansion from West Africa. French arms conquered eastward to Lake Chad. The aim was to unite the French colonial territories of North, West and Central Africa and, if possible, to link the Atlantic Ocean and the Red Sea by a belt of French territory. As a consequence, the lands and peoples surrounding Lake Chad became, at the end of the 1870s, the centre of French colonial aims[56]. As summarized in a recent French account of this period-

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[54] Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 39, para. 80.

[55] Ibid., pp. 64-65, para. 151.

> "... atteindre le Tchad et en faire la clef de voûte de l'implantation française en Afrique fut bien l'objectif central des vingt années de conquête de la fin du siècle dernier, autour duquel tout le reste s'ordonna, au point qu'aujourd'hui encore, cent ans plus tard, préserver une influence prépondérane à N'Djamena reste l'impératif majeur de toute politique cohérente de maintien d'une présence française conséquente au sud du Sahara[57]".

(b) France's Three-Pronged Advance on Lake Chad

4.54 To attain its aim, France advanced inland along the Senegal-Niger axis, starting in 1879. Kita was occupied in 1881; Bamako in 1883; then the French troops took over, in 1887-1889, the territories of Sultan Ahmadou to the north and of the Almani Samory to the south, arriving at Segu in 1891 and in Timbuktu in January 1893. Here they were half-way on the road from Senegal to Lake Chad. From Segu, they attacked the Mossi country of Upper Volta (now the State of Burkina-Faso) to the southeast, occupying Wagadugu in 1896. From Timbuktu they moved to Say in 1896 and to Zinder three years later, finally arriving at N'Guimi, on the banks of Lake Chad, on 23 October 1899.

4.55 There are two aspects of the French march from Senegal to Chad that should be mentioned. First, although by the Anglo-French Declaration of 1890, establishing "spheres of influence" in West Africa, France was recognized by Great Britain to have a zone of influence south of its African territories on the Mediterranean shores to a line drawn between Say on the Niger river and Barroua on Lake Chad, the French did not arrive at Say until 1896 and at Lake Chad until 1899. Second, the French incursion into the Sudan from the Niger required no less than 12 military campaigns. It was marked by extreme violence and cruelty to the local inhabitants. The chief offenders were the forces

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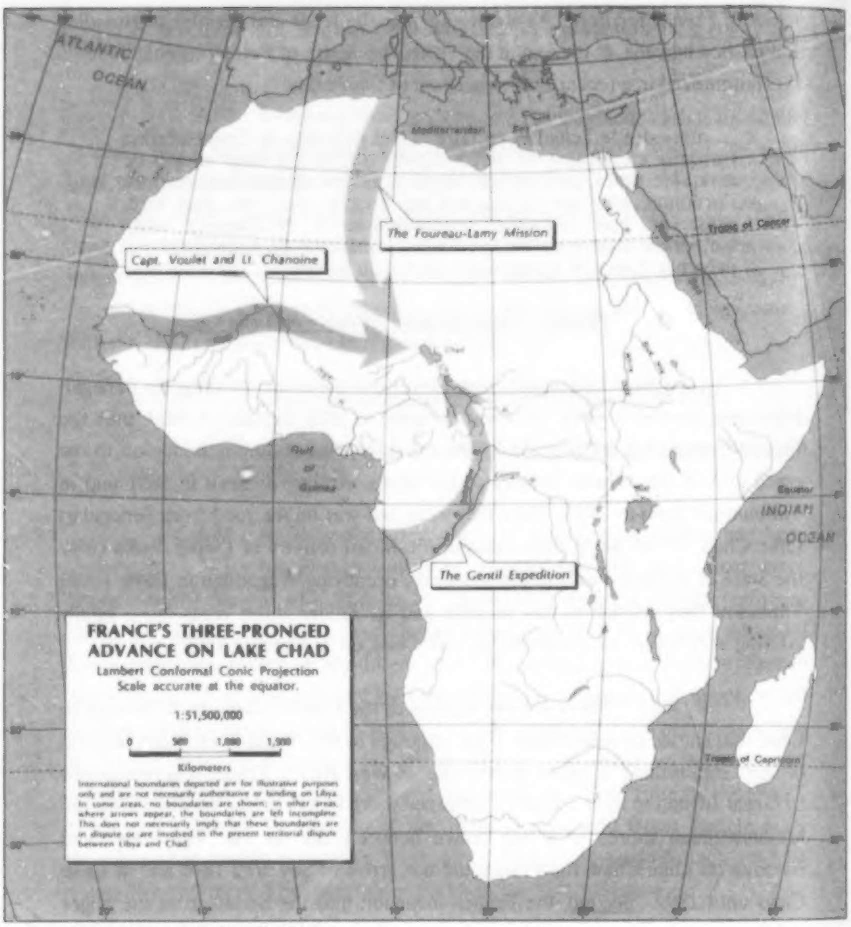
[56] Lake Chad was also a magnet for other colonial Powers, such as Germany and Great Britain and, later, Italy.

[57] Biarnès, P.: Les Français en Afrique Noire de Richelieu à Mitterand, Paris, A. Colin Editeur, 1987, p. 145. (A copy of this page is attached as Exhibit 24.)

Map No. 32



FRANCE'S THREE-PRONGED ADVANCE ON LAKE CHAD

Lambert Conformal Conic Projection
Scale accurate at the equator.

1:51,500,000

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

Specially prepared for presentation to the International Court of Justice

commanded by Captain P. Voulet and Lieut. J. Chanoine during 1898 and 1899[58].

4.56 For the main French thrust to Lake Chad, two other routes were followed[59]: one from the Congo River and the Oubangui River in the south; the other from Algeria in the north across the Sahara through Tadjenout and Agadès to Zinder. This last expedition was the well-armed Foureau-Lamy Mission, to whom the French, by arrêté of 5 March 1898, entrusted the supposed non-military task to "poursuivre l'exploration scientifique du Sahara, entre l'Algérie et le Soudan"[60]. Thus, there were three military thrusts by the French to Lake Chad: (i) from the west, under the command of Captain Voulet and Lieut. Chanoine; (ii) the Gentil expedition from the Congo in the south; and (iii) the Foureau-Lamy mission from Algeria. These are each illustrated on Map No. 32.

4.57 The Gentil expedition, between 1875 and 1885, advanced inland from Gabon through the Congo and Oubangui rivers, at first following the plans of Pierre Savorgnan de Brazza, which were based on wide explorations of the region, pacific penetration by entering into treaties with native Chiefs, and the creation of a network of trading stations[61]. But after the creation of a military post at Bangui in 1889, the aims of French colonial expansion were widened. From Bangui, it was possible to head eastward to the Nile river system via the Oubangui River. This French thrust to the east, which started in 1894, ended in the debacle of the Marchand Mission in Fachoda in November 1898[62]. From Bangui and Kribidje, it was also possible to move northward to Lake Chad through the Chari-Longone River system, but the French attempts between 1891 and 1895 failed, although a military post was created on the Gribingui River permitting access to the Chari River.

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[58] See, Rolland, J.F.: Le Grand capitaine, Paris, Grasset, 1976, p. 81 on the attitude of Captain P. Voulet who had adopted the following principle: "Ville qui se rend, ville sauve, ville qui se ferme, ville morte". In the case of Birnin, a village of 10,000 inhabitants, it was attacked with canon shots and bayonnet, more than 1,000 persons being slaughtered; in Tiberi, Captain Voulet had native women hanged in front of the village to eliminate the resistance, and then burned the village later. See, Abadie, op. cit., pp. 36-41.

[59] In a note dated 12 July 1897, the French Consul-General at Tripoli, M. Lacau, refers to the question put to him on "... les conditions matérielles dans lesquelles pourrait être transportée et ravitaillée une expédition française qui prenant la direction du Haut-Oubangui, ou partant de l'Algérie, se rendrait au Kanem pour s'y installer" (emphasis added), saying that: "Seuls des explorateurs compétents comme le Capitaine Cazemajoux ou M. Gentil ayant parcouru consciencieusement et en détail ces contrées pourraient donner à ce propos une opinion ayant une réelle valeur." See, French Archives Annex, pp. 240-241

[60] Abadie, op. cit., p. 18. Although the Foureau-Lamy Mission had in principle a scientific aim, Abadie adds: "Elle était néanmoins escortée militairement et armée en raison de l'insécurité du désert et aussi parce qu'elle avait un but second: contribuer à faire un tout de l'Algérie, du Soudan et du Congo en rejoignant dans la région du Lac Tchad la Mission Afrique Centrale des capitaines Voulet et Chanoine qui venait du Sénégal et du Niger et la mission Gentil qui venait du Congo et de l'Oubangui, ces deux missions dépendant plus particulièrement du Ministère des Colonies". (A copy of this page is attached as Exhibit 23.)

4.58 From this post, Gentil, with the little steam ship *Léon Blot* and two whale-boats, started out on August 1897 for Lake Chad arriving on 31 October of that year[63]. But the French expedition navigated in the waters of Lake Chad for only three days. Fearing an attack from Sultan Rabbah's forces, it returned by way of the Chari River. Other than Captain Monteil during his travels from the Niger to Tripoli in 1890-1892[64], no other French group had reached Lake Chad until Gentil did in October 1897. Although his presence there was very short, it had some consequences for the area. *First*, Gentil concluded a protectorate treaty with the Sultan of Baguirmi[65] and entered into relations with the Sultan of Dar Kouti, events that provoked Rabbah to react promptly, attacking the Sultan of Baguirmi. *Second*, after the death of Lieutenant Bretonnet and the defeat of his forces at Tobgao in July 1899, the French realized that war would have to be conducted against Rabbah if the areas surrounding Lake Chad were to be controlled[66]. It is interesting to note that the French regarded the area around Lake Chad and further to the south as prospective settlers. As will be seen below, the borderlands regions were treated in a very different fashion - as areas to invade militarily in order to protect the areas of settlement to the south of the borderlands.

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[61] At the time, no strong organized power existed in areas of what is today Gabon, the Congo and the Central African Republic comparable to those of the Sudanic areas, the local societies in the former being limited in extent and population. *See* Biarnès, *op. cit.*, pp. 165-166.

[62] *See*, para. 5.18, below.

[63] French enthusiasm in respect of Gentil's expeditions seems to have anticipated the news some months earlier, given that the General-Consul at Tripoli referred in his note of 12 July 1897 to the fact that "... plusieurs journaux, entre autres 'l'Echo de Paris', ont parlé ces jours-ci de la mission Gentil au Lac Tchad, 'sur lequel flotterait actuellement une cannonière portant les couleurs françaises'". *See*, *French Archives Annex*, p. 244.

[64] *See*, para. 4.40, above.

[65] On 12 July 1897, The General-Consul at Tripoli, M. Lacau, had expressed the wish that Capitain Cazemajoux's expedition could "... conclure avec le Sultan du Kanem ou avec celui du Bornou ou du Baghirmi, un traité d'alliance d'après lequel l'un ou l'autre de ces Sultans nous reconnaîtrait le droit d'établir un poste militaire dans ses Etats, nous nous trouverions en bonne posture pour suivre de près les mouvements des Anglais, pour faire de la propagande française parmi les populations environnantes, les persuader d'entrer en relations commerciales suivies avec l'Algérie et la Tunisie qui sont pays musulmans, et pour les aider de nos conseils". *See*, *French Archives Annex*, p. 238.

4.59 The Fourreau-Lamy mission started from Algeria in October 1898 with 300 men, one canon and more than 1,200 camels. It quickly ran into serious trouble due to the hardships encountered in crossing the Saharan Desert and to the repeated attacks of the Tuareg. However, after suffering heavy losses, the Foureau-Lamy Mission arrived at Agadès in July 1899, and at Zinder in November. From there, they reached Lake Chad on 21 January 1900[67], and met up with the forces that had come from the Niger in February 1900. In March 1900, both forces occupied Kousseri, a village on the Chari river, where they were joined by the forces of Gentil for the attack on Rabbah[68].

4.60 To round out the picture, it is useful to add here some facts concerning the Nilotic Sudan during the period 1870 to 1900 that have relevance to the region involved in the present case.

4.61 Under Khedive Ismail, Egyptian hegemony over the equatorial regions of Central Africa - what was in reality the Egyptian hinterland - was established between 1869 and 1879, and Ecuatoria Province was created. Egyptian influence also extended to the lands of Bahr Al-Ghazal, the Darfour and the Kordofan[69]. However, by 1879, a strong current of reaction against the anti-slave trade campaign of the Governor General of Sudan, in part due to Ismail's financial bankruptcy, led to a period of crisis, aggravated in June 1881 when

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[66] Bruel, G.: L'occupation du bassin du Tchad, Moulins, Crepin Leblond, 1902; Zeltner, C.: Les pays du Tchad dans la tourmente, 1880-1903, Paris, L'Harmattan, 1988.

[67] At first, the Foureau-Lamy forces followed the southern borders of Lake Chad expecting to receive news of Gentil's forces which had not arrived; and knowing that Rabbah was not far, they turned back, passing by Kouka and proceeding to the northern borders of the Lake. See, P. Haller's notes on the period between 21 January and 18 February 1900 (when they joined the Central African Mission), in Abadie, op. cit., pp. 167-175.

[68] Abadie, op. cit., pp. 44-46.

[69] In 1877, an Englishman, Charles G. Gordon, was appointed by Ismail as Governor General of the Sudan and entrusted with the task of suppressing slave trade, as was S. Baker in Equatoria from 1869 to 1873.

Muhammad Ahmad ibn Abd Allah declared himself to be the Mahdi, preaching for a return to pure Islam. The similarity of their mission to that of the Senoussi has already been noted above[70].

4.62 From 1885 to 1898, the Mahdi controlled the general region now comprising the State of Sudan, including Darfour, and launched a holy war or jihad on neighbouring countries, even threatening the Lake Chad area. After Great Britain decided to intervene in Sudan to protect the Upper Nile, an Anglo-Egyptian army under the command of General Kitchener was ordered to invade Sudan. They defeated the Khalifa Abd Allah and his forces in battles fought between April and September 1898. Kitchener then pressed on down the Nile to Fachoda with a small flotilla, where he and Captain Marchand had their famous encounter on 18 September 1898.

(c) French Objectives, Colonial Rivalries and Turkish Attitudes, 1897-1900

4.63 While French forces were still far from Lake Chad, British campaigns in Sokoto, ouvertures in Bornou by the MacIntosh Mission of the Royal Niger Company and, coming somewhat later, British attacks in Nilotic Sudan against the Mahdi forces had greatly preoccupied the French authorities. This is seen from the dispatches of the French Consul-General at Tripoli, M. Lacau (January 1897), and of the French Ambassador in London, A. de Courcel (4 January 1897).

4.64 M. Lacau, after referring to troubles created by Rabbah's occupation of Bornou, expressed his fears that:

> "Le Gouvernement britannique pourrait bien profiter du moment psychologique où ces différents pays seront ruinés ... pour avancer sur l'échiquier du Soudan Haussa ce pion si important qui s'appelle la Compagnie Royale du Niger ... après le Sokoto et le Bournou viendrait le tour de Kanem et du Wadaï et les anglais de la Compagnie Royale du Niger donneraient ainsi la main à l'Armée Anglo-Égyptienne dont les opérations dans le Kordofan seront

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[70] See, para. 3.56, above.

> menées à fond avant qu'il soit longtemps. S'il en allait ainsi nous perdrions le fruit de tous les efforts que nous avons accomplis pour faire profiter l'Algérie, la Tunisie et nos possessions occidentales d'Afrique du commerce avec les plus riches contrées du Soudan[71]."

To banish these fears, M. Lacau proposed an action by French military forces in order to -

> "... s'emparer de la clef de cette contrée, c'est-à-dire d'occuper militairement, et en force, le Nord du Lac Tchad afin de dominer le Bornou et de faire passer sous notre protectorat Kanem et Kaouar. D'après les renseignements qui me sont donnés le Tibestou qui a Kaouar pour capitale est une contrée montagneuse par conséquent saine: compte vingt mille habitants pacifiques, depuis le pied de ses montagnes jusqu'à Bilma se déroule l'immense saline où l'on vient chercher le sel de tous les points de l'Afrique[72]."

4.65 As for the French Ambassador in London, he concurred with the Consul-General in Tripoli, observing that:

> "Dès 1890, un fonctionnaire anglais au Niger, qui est aujourd'hui gouverneur d'une colonie importante, coloriait en rouge sur la carte d'Afrique, comme sphère d'influence anglaise, toute la région s'étendant entre la vallée du Nil et celle du Niger[73]."

He and the Consul-General revealed the origin of these French fears: that Article II of the 1890 Anglo-French Declaration had only established a limit of "spheres of influence": a line between Say on the Niger River and Barroua on the western shores of Lake Chad (Map No. 36, referred to in paragraph 5.08 below). They reflected the fact that the future of Bornou and the countries east of Lake Chad was underdetermined and might possibly be the object of a British move from Egypt or the Niger River into Bornou and Ouadaï, excluding any future linking up of the French possessions in North and West Africa with those of French Equatorial Africa[74].

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[71] The General-Consul of France at Tripoli, M. Lacau, 4 January 1897. French Archives Annex, p. 180.

[72] Ibid., p. 183 See, also, dispatch of 3 March 1897, where M. Lacau indicated that the British seemed to support Ottoman moves to the south of Tripoli, and expressed the fear that the British "... deviennent les seuls maitres du Soudan Haoussa comme ils le seront peut être bientôt du Soudan Egyptien grâce à la marche en avant du Général Kitchener." M. Lacau continued to press this point. French Archives Annex, p. 192.

[73] See, para. 1.39 (last item), above.

4.66 After the conclusion of the Anglo-French Declaration of 21 March 1899[75], another threat to French colonial interests in the area of Lake Chad appeared, this time from Germany. In a Note of 3 May 1899, Germany made a general reservation concerning its rights should they be affected by the Anglo-French agreements of 1898 and 1899[76]. In an internal French note considering the portent of this German reservation it was stated that (i) France lacked at that moment any effective presence in the territories that were the object of the Anglo-French arrangements; (ii) a German expedition to Lake Chad would be feasible from Cameroon; and (iii) there was a third possibility:

> "Une autre éventualité aurait, d'après certaines informations, préoccupé en France diverses personnalités coloniales. On se demandait si l'Allemagne ne pourrait pas chercher à profiter de ses bonnes relations avec la Porte pour se faire ouvrir ou céder par elle sous forme quelconque les pays situés entre la Tripolitaine et le Tchad, et qu'à Constantinople on affecte de considérer comme constituant l'hinterland du Vilayet. La Turquie a renouvelé

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[74] See, the dispatch from the French Ambassador at London, dated 12 April, 1897. See, also, as to Article II of the Declaration of 1890, the dispatch of the Consul-General at Tripoli, 28 May 1897, in which, referring to "...l'attaque de front à laquelle se prépare le Général Kitchener" he adds: "Si nous ne voulons pas laisser tomber entièrement aux mains de nos rivaux toutes ces contrées du Centre Africain ... il faudrait agir de notre côté avec rapidité, décision et énergie dans ces parages, au moyen d'une expédition nombreuse et supérieurement armée. Le Haut Oubangui où nos sommes en territoire français pourrait peut-être alors être choisi comme ligne d'opération. Ne semble-t-il pas juste en effet que dans ce partage nous prenions position de manière à pouvoir revendiquer Darfour, le Wadai, Kanem, Bornou, le Tibestou et cette grande saline de Bilma qui est si précieuse pour les Touaregs et à laquelle ils sont contraints de venir s'alimenter. Toutes nos possessions d'Afrique se trouveraient ainsi soudées les unes aux autres..." (emphasis added.) French Archives Annex, p. 214. The French General-Consul in Egypt, in a dispatch of 30 May 1897, also concurred with Baron de Courcel and M. Lacau's views, indicating that British actions in Sokoto and Nilotic Sudan were intended "... à étendre leur influence du bassin du Nil à l'embouchure du Niger, et à menacer, par cela même, l'hinterland de l'Algérie et de la Tunisie" (emphasis added); thus, the French occupation of Tibesti "serait de nature à contrebalancer sérieusement le progrès de l'influence anglaise, et nous permettrait de prendre position". French Archives Annex, p. 221. The French Minister of Colonies, however, by dispatch of 4 June 1897, pointed out that such action "risquerait actuellement d'émouvoir l'opinion publique" and that "Mon Département ne saurait en tout cas assumer la responsabilité entière d'une politique qui pour être utilement conduite pourrait exiger le concours de votre administration des Ministères de la Guerre et de la Marine et du Gouvernement Général de l'Algérie". French Archives Annex, p. 225.

[75] See, para. 5.19, et seq., below.

[76] See, paras. 5.56-5.57, below.

> récemment la protection (sic: protestation) dont elle nous avait saisis en 1890 au sujet de ces territoires, et on est amené à se demander s'il n'y a pas lieu de noter une certaine concordance entre cette démarche et celle que peu après l'Allemagne à faite, à son tour auprès de nous[77]."

This French document went on to say the following:

> "On ne saurait toutefois perdre de vue qu'à défaut d'un abandon effectif de territoires il suffirait que la bienveillance de la Turquie fût acquise à des entreprises allemandes qui, reprennent la route de Nachtigal gagneraient le Tchad par la Tripolitaine. Point ne serait besoin de troupes nombreuses. Il ne faudrait pour cette tâche qu'un voyageur hardi et heureux qui réussirait à gagner le Kanem et à y conclure des traités".

It is important to note that no agreements were entered into by the French with the indigenous tribes of Kanem, which were led by the Senoussi.

4.67 The French position at the time, as established by this document, contained at least one inherent inconsistency. On the one hand, France considered that the African lands attributed to its zone of influence by the Anglo-French arrangements of 1898 and 1899 were "... territoires que nous sont dévolus, mais que nous n'administrons pas". But on the other hand, while rejecting the Ottoman claim to the hinterland of Tripolitania, the possibility of the abandonment or cession of these territories to Germany by the Ottoman Empire was envisaged. But such an act could only be accomplished by a State having sovereignty over the territory.

4.68 In 1899, the German threat even seemed to materialize: as the French Minister of Colonies informed Mr. Delcassé, "... deux missions allemandes ayant le Tchad pour objectif seraient parties, l'une du Cameroun et l'autre de Trejabli[78]". The French Embassy in Berlin, reporting on the increase of German military forces in Cameroon voted by the Reichstag, suggested that "... l'effort de l'administration de cette colonie se porterait naturellement vers (le Tchad?)"[79]. In order to exclude any unilateral action by Germany in the area, in

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[77] Note pour le Ministre au sujet de la note allemande du 3 mai 1899. French Archives Annex, p. 251.

[78] Minister of Colonies to the Minister of Foreign Affairs, 9 September 1899, French Archives Annex, p. 253.

[79] The French Embassy in Berlin to the Minister of Foreign Affairs, 3 April 1900, Exhibit 25, p. 14.

October 1901, the French government considered entering into negotiations with Germany to modify the spheres of influence established by the 1894 agreement between them[80].

4.69 Finally, French fears concerning further Turkish action in the area surrounding Lake Chad were reawakened by the Ottoman protest against the Anglo-French Declaration of 21 March 1899. This is shown in a dispatch from the French Consul-General in Tripoli of 8 September 1899[81]. The dispatch addressed the report, which had appeared in a Cairo newspaper, that the Ottoman authorities had sent a military expedition to Ouadaï[82] - a possibility excluded by the Consul-General on the grounds of the limited Ottoman military forces in Fezzan. This incident led to some other interesting developments bearing on Ottoman attitudes and the extent of control of the Senoussi.

4.70 Although excluding direct Ottoman action in the regions surrounding Lake Chad, the French believed, according to the Consul-General, that-

> "... il n'est pas moins certain que la Turquie est préoccupée de se ménager, par d'autres moyens, une influence plus ou moins effective dans la région que son Ambassadeur à Paris appelle 'l'Hinterland de la Tripolitaine.'[83]"

He added that:

> "Les plus récentes informations de ce Consulat Général et du Vice-Consulat de Benghazi établissent l'existence de négociations entre des Souverains Soudanais et les autorités ottomanes de la Tripolitaine; soit par manque d'initiative, soit par manque de ressources, soit par crainte de complications politiques, la Turquie paraît hésiter à accepter les offres de vassalité qui lui sont offerts et à engager son pavillon."

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[80] The Ministry of Foreign Affairs to the French Chargé d'Affaires in Berlin, 21 October 1901, Exhibit 25, p. 15.

[81] M. Rais to M. Delcassé, 5 September 1899, Exhibit 25, p. 1.

[82] See, text in Annex to Dispatch from Cairo, 5 January 1900, Exhibit 25, p. 7.

[83] M. Rais to M. Delcassé, 5 September 1899, Exhibit 25, pp. 1 and 4.

This revealing dispatch went on to express the belief that the danger to French colonial interests would be "la proclamation du protectorat ottoman sur des territoires rentrant dans notre sphère d'influence".

4.71 In fact, the Ottoman-oriented press gave out the news that Rabbah had accepted Ottoman sovereignty, and that other local powers in the area, such as Ouadaï, had done so as well[84]. It was also reported that an Imperial iradé had declared Ottoman sovereignty over Ouadaï, news which the French evaluated this way -

> "... (il) paraissait vraisemblable si on la rapprochait du langage tenu par le Gouverneur de Benghazi, lors de la remise de décorations destinées au Sultan de Wadaï[85]."

To counter these threats, the French Consul-General at Tripoli urged that French forces operating in the Lake Chad area be augmented "afin de leur permettre d'agir vigoureusement au Ouadaï et d'y établir notre prépondérance[86]".

4.72 The French authorities also gave careful attention to Ottoman-Senoussi relations at the time. The document of 5 September 1899 referred to above, which dealt with the rumours emanating from a report in a Cairo newspaper, mentioned "l'accord qui paraît s'être établi récemment entre le Cheikh Senoussi et le montessarrif de Benghazi". It also pointed out that "la présence à Gouri du chef du senoussisme lui permettra d'exercer son influence plus directement dans la région du Tchad". In this dispatch, the French General-Consul seemed to exclude direct Ottoman influence in the area at the time for economic and religious reasons, describing the situation in the following terms:

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[84] See, an Article appeared in "Trablous" on 27 January 1900, as attached to a letter of the French Consulate in Damascus, 12 February 1900, French Archives Annex, p. 262.

[85] Note to the French Vice-Consul at Benghazi, 17 January 1900, referring to an article in the newspaper "Es Soltana" of Cairo, French Archives Annex, p. 254. The Consul-General at Tripoli, Mr. Lacau, did not think that the news had any basis, given the publicity habitually accorded to an Imperial iradé in the Ottoman press of Constantinople. However, he confirmed that "Le sultan des Ottomans a honoré le Souverain du Wadaï d'une lettre et d'une décoration de même qu'il a conféré à Ouen Guidassen, l'Amenokal actuel des Azdjer un cachet officiel et la dénomination de Pacha des Touareg Azdjer (Agghor)", stating that this was a habitual Turkish practice, intended in this case to create difficulties for the French in the area. See, M. Lacau to M. Delcassé, 19 January 1900, French Archives Annex, pp. 257-258.

[86] M. Lacau to M. Delcassé, 23 February 1900. French Archives Annex, p. 265. See, also, dispatch from Lacau of 14 January 1901, indicating the limited military means of Ouadaï and the advantages of occupying this country, French Archives Annex, p. 267.

> "Mais le Gouvernement Ottoman n'y est intervenu qu'accidentalement, soit pour favoriser le commerce soit pour assurer la sécurité des routes. C'est aux tribus du désert, aux confréries religieuses, aux souverains locaux, que les négociants doivent demander une protection ou un appui, et leur qualité d'ottomans n'est pas une sauvegarde pour eux."

SECTION 3. The Organized Peoples at the Time of European Colonial Expansion

4.73 It has been seen that at the time when lines were being drawn on maps of Africa as a result of the Anglo-French agreements between 1890 and 1899, neither State had any real presence in the areas of African territory they were so cavalierly dividing up between them as "spheres of influence". But there was in this area a series of organized societies of tribes in control of the regions all the way from the lands surrounding Lake Chad in the south to Tripoli in the north. Had the French and British been there, they would have observed: (i) the close ties between the peoples of Ottoman Tripoli and the peoples of Bornou, Kanem and Ouadaï, ties that had been strengthened since the 1840s due to the presence of tribes that moved south from Tripolitania; and (ii) the presence of an organizing authority, the Senoussi, which had coalesced the tribes into resisting French attempts to invade this land. Both circumstances confirmed once again the north/south continuum between Tripolitania (and Cyrenaica) and the Sudanese lands that had existed over several centuries. These two elements will now be taken up in some detail.

(a) The Ottoman Administration in Fezzan; French Threats; and Ottoman Relations with Tribes and Organized Societies

4.74 After the passing of Algiers to the French in 1830 and Mohammad Ali's attainment of near-independence in Egypt, the Ottoman Empire's primary motive in reasserting its sovereignty over Tripoli was to prevent further losses in North Africa[87]. The Porte was aware that Tripoli's economic life had been for centuries dependent on trans-Saharan trade and contacts with the Sudanese States. Unlike the European Powers, the Ottoman Empire was well acquainted with these lands and peoples. Thus, the control of Fezzan - and early

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[87] Wright, Libya, Chad and the Central Sahara, op. cit., pp. 73 and 112.

Ottoman occupation of Ghat, Ghadamès and Mourzouk[88] - were aimed not just at preventing future French encroachments; they were to secure the caravan routes that were of such economic importance.

4.75 Visiting Fezzan in 1869, Nachtigal offered some points of interest concerning the Ottoman administration there. He indicated that Tejerri was "... the most southerly inhabited place in Fezzan", and that Tripoli's authorities gave it "some sort of protection against the Arabs, and the Toubou themselves form a colony in Tejerri[89]." But he regarded the Ottoman administration of Fezzan to be loose, due to the meagre resources at its disposal. Regarding Mourzouk, the capital of the Fezzan, he said:

> "The power of the local government scarcely extends beyond the walls of Murzuq, and in the oases subject to its administration it has only a moral influence. It has no means at its disposal, such as, in view of the great distances to be covered, would be so essential, for making its authority felt in the more distant places, no horses, even no camels for despatching an armed force to the oasis. The roving Tubu carry off whole herds of camels within a few hours of Murzuq, and the Arabs of the Sherqiya and the Meqariha from the Wadi Shiyati obey the government authorities only so far as it suits them; for who was willing to see them out and punish them in their own homes[90]."

4.76 The perception that European travellers had of weak Ottoman rule in Fezzan was common at the time. But Ottoman rule was, in fact, more flexible than it was weak. For example, when the French appeared near Ghadamès in 1862, entering into a treaty with the Azghar Tuareg confederation to protect Algerian trade with the Sudan, the Ottomans had only a mudir stationed there. But they quickly reacted to this threat, posting a garrison at Ghadamès[91], as they did later in Borkou, Ennedi and Tibesti in the face of

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[88] British Vice-Consulates were opened at Mourzouk in 1843 and Ghadamès in 1850; see Wright, Libya, Chad and the Central Sahara, op. cit., p. 67.

[89] Nachtigal: op. cit., Vol. I, pp. 212-213. Tejerri is south of Mourzouk, in the district of Qatrum where the villages of al-Qatrum, Bahkhi and Medrusah are also located (see, Rossi, op. cit., p. 338). However, in the course of the travel of Haj Omar al-Tarabulsi from Tripoli to Ouadaï in 1873, he indicated that Al-Uar (Toummo), on the caravan route from Bornou to Mourzouk through Kaouar, was "the further point subject to our Sultan". See, Coro, F.: "Un documento inedito sull'antico commercio caravaniero fra Tripoli e l'Uadai", (Gli Annali dell'Africa Italiana, Vol. IV, 1941), referred to by Wright, Libya, Chad and the Central Sahara, 1989, op. cit., p. 113.

[90] Nachtigal, op. cit., Vol. I, p. 165-166. (A copy of this page is attached as Exhibit 18.)

[91] Wright, Libya, Chad and the Central Sahara, op. cit., pp. 112-113.

French threats in that sector. When he said that the Ottomans had "only a moral influence" over peoples of the oases "subject to its administration", Nachtigal was judging by European standards. This European misconception has already been discussed above in Part III in dealing with the particular circumstances that prevail in a desert environment. It may be added here that the Ottoman Sultan enjoyed a position of supremacy among Islamic peoples: he was at the same time the Caliph of the Muslim faith and the sovereign power; but he often exercized his authority through a kind of "indirect" administration via the chiefs of local tribes. Allegiance to Ottoman rule by local tribes was symbolized by the simple delivery to the local chief of a Turkish flag, robes or other indications of sovereignty. Sometimes an Ottoman firman appointed him as kaymakam - the ruler of a kaza or local administrative district - with a small regular payment. For example, the Ottoman governor or mutassarrif of Fezzan set up in 1879 two new kaza under his overall dominion: one with the Azghar Tuareg at Djanet, the other with the Toubou Reshada at Bardai in Tibesti[92].

4.77 The French Consul-General at Tripoli, referring to the Turkish presence at Ghat, Ghadamès and Mourzouk and their relations with the Tuareg, showed that he well understood the reality of this "indirect rule" in a 1897 dispatch in which he said:

> "A mon sentiment, ce n'est pas par impuissance, mais par tactique que les Turcs ont évité jusqu'à présent de s'ingérer dans les affaires du désert. En communion d'idées par la religion avec les Touaregs et les indigènes de l'intérieur, unis à eux dans un même sentiment de haine contre l'Européen, ils les ont toujours considérés comme des auxiliaires de premier ordre pour leur politique d'obstruction dans ce pays. Ils ont toujours vu en eux une barrière dressée contre notre marche en avant et notre oeuvre de pénétration dans le Centre africain... La relève et le ravitaillement de leurs garnissons à Ghadamès, Ghat et Mourzouk se font d'une façon aisée et régulière, et le petit nombre même des soldats qui les composent, alors qu'ils entretiennent en Tripolitaine 12.000 homme inactifs, indique bien leur dessein prémédité de laisser aux Touaregs leur liberté d'action, de même qu'il indique la certitude où ils sont de ne pas être attaqués par eux sur les points qu'ils occupent[93]".

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[92] The Arabic word "reshada" means "rock". The Toubou Reshada were a Toubou tribe inhabiting the "rock", that is the Tibesti massif.

[93] M. Lacau, note of 12 July 1897, French Archives Annex, p. 230-233

(b) The Senoussi's Special Role

4.78 Aside from the Ottoman ties to the region, there was the effective organizing role played by the Senoussi at the time the French arrived at Lake Chad. The Ottoman administration did not ignore or oppose the Senoussi penetration from Cyrenaica into the Fezzan and Saharan areas and southwards into the Sudan[94]. Ottoman-Senoussi relations were strained until 1896, for religious and other reasons, although the name of the Sultan-Caliph at Constantinople was invoked in the Friday prayers of the khutbah at Koufra[95]. In 1896, the Ottomans attempted a rapprochement with the Senoussi, accepting the autonomous status of the Order. The government of Cyrenaica in the late 19th Century has even been referred to as a "Turco-Sanussi condominium"[96], and it has been said by an Italian authority that the Ottomans allowed the creation of "uno Stato semi-independente" in their territory[97]. By the end of the 19th Century, the Senoussi had become, in effect, the de facto government of the interior, filling a political vacuum: an administrative apparatus which placed the interior under a common authority[98].

(c) The Indigenous Tribes

4.79 When Nachtigal visited the Tibesti in 1869, he not only found Toubou colonies in the southern villages of Fezzan[99]; he observed that outside the Tibesti massif-

> "... for a long time they have had exclusive control of the Kawar oasis, while detached tribal sections have penetrated as far as Kanem and Bornu, and live in the westernmost valleys of the Ennedi region which belong to the Bedeyat or Baele. But there, as in Wadai, Bornu and Fezzan, they are subordinate immigrants, and are subject to the local authorities. Only Kawar, while also constituting an independent separate community, is still considered a colony of Tibesti, just as Teda control of the wells and oases on

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[94] Rossi, op. cit., p. 342.

[95] This fact is reported by Saiq Pasha in the recital of his travels in 1896 to Koufra, published at Constantinople in 1902, p. 68. See, Rossi, op. cit., p. 343, fn. 107.

[96] Evans-Pritchard, E. E.: The Sanusi of Cyrenaica, Oxford, Clarendon Press, 1963, p. 98.

[97] Rossi, op. cit., p. 342.

[98] See, Cordell, op. cit., p. 80.

[99] The Toubou have already been introduced and described in Part III, above.

> the Bornu road from the Tummo range to the south of Kawar is undisputed[100]."

The Kaouar oases were then, as now, closely linked to the Tibesti *massif*. The relations of the Toubou, with Ottoman Tripoli, on the one hand, and with the Senoussi, on the other, merit some discussion in the context of the colonial expansion in the region.

4.80 In 1858-1859, the Ottoman Governor of Fezzan, Ahmed Izzet Pasha, extended Ottoman protection to Tibesti, as evidenced by Turkish sources[101]. In 1879, the *kaza* of Toubou Reshada at Bardaï was created as a local district of the Province of Fezzan[102]. The Ottoman policy of penetration south of Fezzan appears not to have been successfully implemented in the period between 1881 and 1890, however; but Ottoman rights and titles in the Sahara and the Sudan were not ignored by the Porte during this period. This is shown in the book that Colonel Omar Subhi presented to Sultan Abd al-Hamid II in May 1881, in which particular attention was given to areas stretching from Tuat to Kaouar in the Sahara and to Tibesti and Bournou[103]. The Ottoman Note of 30 October 1890 addressed to France and Great Britain protesting against the Anglo-French Declaration of 4 August 1890 also revealed an active Ottoman rights in the region and the assertion of Ottoman rights to it[104].

4.81 In 1895-1897, fearing French colonial expansion in the area, the Toubou of Tibesti and Kaouar asked Tripoli for protection. This is shown in 1897 dispatches of the French Consul-General in Tripoli. He reported that in March 1897 "le Sultan du Tibesti et du Kaouar" was to come to Tripoli in the next month "... pour renouveler ses offres au nouveau Gouverneur Général Namik Bey". And he added that in the course of a talk with the British Consul-General, the latter-

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[100] Nachtigal, *op. cit*., Vol. I, p. 355. (A copy of this page is attached as *Exhibit* 18.)

[101] Nagi and Nuri, *Tarabulus-i Gharb*, Constantinople, 1912, p. 165, fn. 2, as quoted by Rossi, *op. cit*., p. 338. However, when Nachtigal visited the Tibesti in 1869 he claimed to have seen no real Ottoman influence.

[102] Nagi and Nuri, *op. cit*., p. 166, as quoted by Rossi, *op. cit*., p. 339.

[103] Omar Subhi, *Tarabulus-i Gharb we-Benghazi ile Sahra-yi kebir we-Sudan merkezi* ("The Importance of Tripoli, Benghazi and Grand Sahara and Sudan"), Constantinople, 1890, pp. 66-71. On this book, *see*, Rossi, *op. cit*., p. 341.

[104] *See*, para. 5.08, *et seq*., below.

> "... m'a parlé du Tibestou et de Kaouar comme de contrées nominalement soumises à l'influence Ottomane (et) il a ajouté que grâce à la situation qu'elle occupait en Tripolitaine et au Fezzan la Sublime Porte aurait pu, depuis longtemps, étendre sa domination effective jusqu'à la région du Tchad, qu'il l'avait fait un jour remarquer à Namik Bey et que celui-ci lui avait répondu par une adhésion complète à cette opinion et en se montrant dans le sentiment qu'il était encore temps pour son Gouvernement d'agir de ce côté[105]."

In May, he reported on Toubou-Ottoman contacts and what he considered the status of the areas south of Fezzan to be, in the following terms:

> "L'on est ici unanime à affirmer (referring to the Sultan of Kaouar, who had just arrived in Tripoli) qu'il offrira à nouveau au Gouvernement Ottoman le protectorat de son pays, et lui demandera de faire occuper le Tibestou, Kaouar et la grande saline de Bilma par des troupes turques ... Ces localités se trouvent en effet dans l'hinterland de la Tripolitaine, partant de la Turquie qui, en sa qualité de co-signataire de Traité de Berlin peut, elle aussi le cas échéant, en invoquer les dispositions: elles sont en dehors des différentes zônes d'influence et rentrent pour le moment dans cette part de vague et d'inconnu que, sur les observations de notre Ambassadeur M. de Courcel, on a laissé subsister en Afrique. Et le Gouvernement Ottoman qui entretient en Tripolitaine un corps de 12.000 hommes pourrait aisément en distraire un millier pour occuper ces trois points importants[106]".

4.82 These views were not at all shared by the French Minister of Colonies, M. Le Bon, who pronounced that France considered "comme faisant partie de sa sphère d'influence tous les territoires compris entre la ligne Say-Barroua et le hinterland de l'Algérie[107]". (When it served their purpose, the French authorities were quite ready to invoke the doctrine of hinterland, which they denied to the Ottoman Empire.) In July 1897, the French Consul-General reported again on Toubou-Ottoman contacts in Tripoli:

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[105] Dispatch from M. Lacau of 3 March 1897, see, French Archives Annex, pp. 188-189.

[106] Dispatch from M. Lacau of 28 May 1897 (emphasis added). Ibid., p. 207 and 211-212. He reported that the Turkish Governor "... a reçu Mainaadem (the Sultan of Kaouar) avec beaucoup de bienveillance, lui a fait rendre les honneurs militaires, l'a fait reconduire dans sa voiture et l'a honoré d'un burnous rouge brodé d'or". Ibid., p. 209-210.

[107] Dispatch to the Minister of Foreign Affairs from the French Minister of Colonies, 11 August 1897. Likewise, the French Consul-General in Egypt in his dispatch of 30 May 1897 considered that the British moves in Niger and in the Nile river system could threaten "l'hinterland de l'Algérie et de la Tunisie", French Archives Annex, pp. 247-248.

> "Par une route caravanière on se rend en un mois de Morzouk par Gatroum, Tedjerri, l'oasis de Djebado et ceux de Nat et de Jeggeba à Kawar qui commande la route des caravanes du Bornou et où l'eau se rencontre partout à moins d'un metre sous terre ... . Si les Turcs acceptaient les propositions de Mairaadem, ils pourraient donc occuper Kawar avec deux à trois cents soldats qu'ils ravitailleraient et entretiendraient au moyen d'envois périodiques et avec les ressources locales comme il en va pour Ghadamès, Rhat et Morzouk. Toutefois, les bruits relatifs à la protection effective du pays de Mainaadem par les Turcs ... sont tombés[108]."

4.83 With the French threat from the south and the descent of the Senoussi into these regions to organize resistance against the French forces, the picture changed. These events and the role played by the Tibesti Derde, Chai, have been touched on in Part III and will be taken up in greater detail in Section 4, which follows.

4.84 The Awlad Sulaiman have also been introduced in Part III above. This Libyan Arab tribe and their allies had revolted against the Karamanli between 1805 and 1816[109]. In 1826, they had undertaken a successful expedition into Kanem. In 1831, they called once more on other Libyan tribes for help, and they seized a large part of Fezzan. Sheikh Abd-Al-Jalil set himself up as an independent Sultan at Mourzouk[110]. The Karamanli soon reasserted control over the caravan routes in Fezzan and forced the Awlad Sulaiman back into the desert who, in turn, started to raid in areas south of Cyrenaica. The Sheikh consolidated his control of the area between Fezzan and the Sudanic States by marriage alliances with the Sultan of Bornou and with notables of Tibesti and Bornou[111], hoping to be recognized by the Porte as Bey of Fezzan[112].

4.85 After the reassertion of direct Ottoman control in Tripoli in 1835, the Awlad Sulaiman revolted again, but the Ottoman forces defeated them in May 1842, killing off much of the tribe. Some of the survivors fled to Borkou and Kanem - pre-desert countries quite like their own - where they established a new homeland[113]. It was not long before they acquired a pre-eminent role in areas of Borkou and Kanem, controlling the caravan routes with a group of Qadhadfa and Orfella associated with them. (It should be noted that the Awlad Sulaiman, the Qadhadfa and Orfella have been throughout Libya's history among its leading tribes, as they continue to be today.) By the 1850s, in spite of another heavy defeat inflicted by the Kel Owi Tuareg confédération, the Awlad Sulaiman had allied themselves with local Toubou and entered into good relations with the Sultan of the waning kingdom of Bornou, protecting him against the rising power of Ouadaï and helping to secure the defense of the Kanem country[114]. This alliance strengthened the Awlad Sulaiman's role in Kanem's affairs.

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[108] Dispatch of M. Lacau of 12 July 1897,French Archives Annex, pp. 233-234

[109] Zeltner, J. Cl.: "Futurs voisins et partenaires des Toubous, les Ulad Sulayman à la fin du XVIIIe siècle". Gens de Roc et du Sable, Les Toubous, Paris, Editions du C.N.R.S., 1988, pp. 149-173.

[110] See, Zeltner, J. Cl.: Pages d'histoire du Kanem, pays tchadien, Paris, L'Harmattan, 1980, pp. 234-235.

[111] See, Cordell, D.: "The Awlad Sulaiman of Libya and Chad: Power and Adaptation in the Sahara and Sahel", Canadian Journal of African Studies, 1985, p. 328. See, also, Zeltner, op. cit., 1988, pp. 166-167.

[112] See, Boahen, op. cit., p. 136.

4.86 When Nachtigal encountered them in 1871, the Awlad Sulaiman dominated Kanem and Borkou[115]. He wrote that their success and prestige -

> "... penetrated to their old home, and drew to them fellow-countrymen, adventurers eager for plunder, from the borders of Egypt to Tripoli and Fezzan, who joined for a time in their enterprises. Urfilla (Orfella) Qedadifa (Qadhadfa), Ferjan, Jawazi, Meqariha, did not shrink from the toil and privations of migration or from long separation from home and family, and appeared in the far south as temporary allies to return home after a few years laden with booty[116]."

By maintaining close ties with tribes living in Tripolitania and Cyrenaica, the Awlad Sulaiman increased their power, from the 1850s on, in Kanem and Borkou. This was another illustration of the continuum between the peoples and the lands bordering the Sahara on its north and south, in this case primarily along the eastern caravan route to the oases of Koufra and Benghazi from Kanem and Oudadaï.

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[113] Cordell, *op. cit.*, p. 329.

[114] Zeltner, *op. cit.*, 1980, gives an historical account of this tribe in the area, pp. 224-251.

[115] Zeltner, *op. cit.*, 1980, at p. 242, says that "Dans les années 1870 les Awlad Sulayman sont les maitres incontestés du Kanem. Leur hégémonie est reconnue à la fois par le Bornou et par le Wadday", the last having tried unsuccessfully either through the neutrality or the support of the Awlad Sulaiman to dominate Borkou. *See*, *ibid*. pp. 249-250, on relations with Ouadaï, where the author says that "Il est certain que la fidélité des Awlad Sulaiman a sauvé le Bornou".

[116] Nachtigal, *op. cit.*, Vol. II, p. 313. (A copy of this page is attached as *Exhibit* 18.) In Vol. III, pp. 13-14, he says that in 1872 a 300-man riding party arrived from the Sirtica to join their tribal allies in Kanem. Cordell, *op. cit.*, p. 333, indicates that in 1861 a large part of the Mijabra tribe also came south to North Kanem, in an uneasy alliance with the Awlad Sulaiman. On the relations between both tribes, *see*, Zeltner, *op. cit.*, 1980, pp. 246-247.

4.87 Around 1860, the Senoussi had begun methodically to try to build up a following in Kanem and Borkou, starting with Ounianga. According to Duveyrier, by 1871 they had plans to build a zawiya at Aïn Galakka[117] - an important commercial centre for the Awlad Sulaiman and the Toubou, on the road from Kanem to Koufra - and another zawiya in Ennedi.

4.88 However, before starting their activities in Borkou and Kanem, the Senoussi needed the consent of the Awlad Sulaiman. Nachtigal refers to two Senoussi envoys in 1871 whose mission was to convince the tribe to halt its attacks on the populations of Borkou and Ennedi. An agreement with the Awlad Sulaiman ultimately was reached by the Senoussi somewhat later, in circumstances that are not entirely known[118]. In any event, in 1896, the Head of the Senoussi sent an envoy to Kanem, Sayyid Muhammad Barrani to found the great zawiya of Bir Alali[119]. This facilitated the consolidation of Senoussi power among the different peoples of Kanem and Borkou. As noted above in Part III, when compared to the large number of zawiyas in Cyrenaica and Fezzan at the time, those established in Ennedi, Borkou and Kanem were relatively few. But they had the common characteristic of being both larger and fortified. Thus, they offered to the indigenous peoples such as the Awlad Sulaiman, the Tuareg and the Toubou, fortified positions from which the defense against the forthcoming attacks of the French could be organized and conducted.

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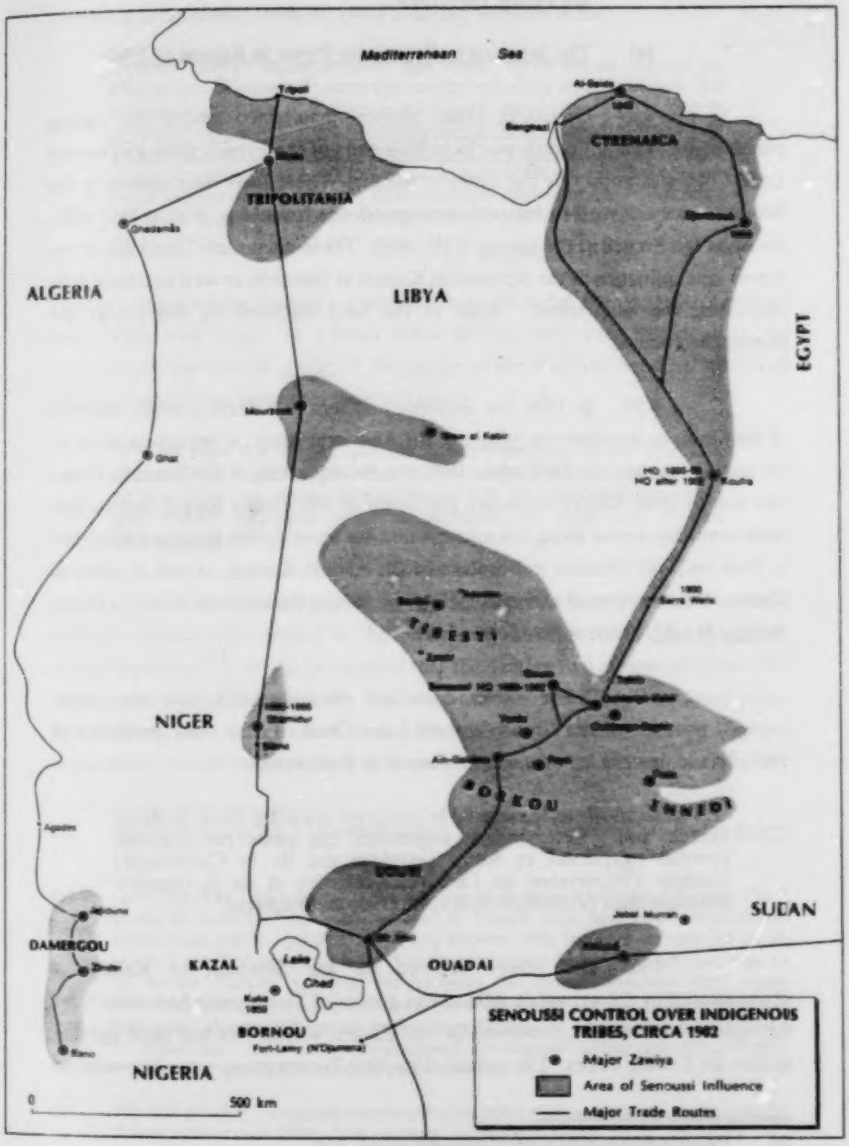
[117] Duveyrier, H.: La Confrérie musulmane de Sidi Mohammed ben Ali Es-Senoussi et son domaine géographique en l'année 1300 de l'Hégire-1883 de notre Ere, Rome, Ministero delle colonie Direzione degli Affari Politici, 1918, p. 65.

[118] See, Ferrandi, J.: "Les oasis et les nomades du Sahara oriental", Bulletin du Comité de l'Afrique Française, January 1910, pp. 3-8; and February 1910, pp. 38-45. According to Ferrandi, the consent of the Awlad Sulaiman was given only after the death of Sheikh Abd el-Djelil, his successor Sheikh Ret being more favourably disposed to the Senoussi. Others, like Lieut.-Col. Destenave, cited by Ciammaichella, op. cit., p. 57, acknowledge favourably the work of reconciliation of Mohammed al-Mahdi among the different factions of the tribe.

[119] On the date of establishment of the Senoussi zawiya of Bir Alali, some authors give 1899 as the date. Mareval, J., in Essai de chronologie tchadienne (1707-1940), Paris, Editions du C.N.R.S., 1974, gives 1896 as the date. See, also, Ciammaichella, op. cit., p. 59, footnote 62.

Map No. 21


Mediterranean Sea
Tripoli
TRIPOLITANIA
Ghadamès
CYRENAICA
Benghazi
ALGERIA
LIBYA
EGYPT
Mourzouk
Ghat
Koufra
1902 Sarra Wells
TIBESTI
BORKOU
ENNEDI
NIGER
Agadès
DAMERGOU
Zinder
Kano
KAZAL
Lake Chad
Kuka 1900
BORNOU
Fort-Lamy (N'Djamena)
NIGERIA
OUADAI
SUDAN
Jebel Marrah
0
500 km
SENOUSSI CONTROL OVER INDIGENOUS TRIBES, CIRCA 1902
Major Zawiya
Area of Senoussi Influence
Major Trade Routes

SECTION 4. The French Wars Against the Muslim Organized Peoples in the Period 1899-1909

(a) The Senoussi as Organizing Power in Kanem by 1900

4.89 Given the close contacts maintained among the trading places of the Sudan, there is no doubt that news of the French advances toward Lake Chad was known by the tribes in Kanem. These facts were known by the Senoussi, as evidenced by internal correspondence from May 1899 to May 1902, found by the French at the zawiya of Bir Alali. These documents demonstrate the power and influence of the Senoussi in Kanem at that time as well as their role in organizing the local tribes. Some of the facts disclosed by this source are summarised below.

4.90 In 1896, the Senoussi had sent to Kanem a senior member of the Order to establish the zawiya at Bir Alali near Mao, an important point on the caravan routes. In December 1899, the headquarters of the Senoussi Order was moved from Koufra to Gouro just south of the Tibesti massif, from where there was easy access along the eastern caravan route to the zawiyas established at Faya and Aïn Galakka in Bornou and Bir Alali in Kanem, as well as north to Koufra. The location of the principal zawiyas along the caravan routes is shown on Map No. 21, which appears again here[120].

4.91 These moves coincided chronologically with the three-pronged advance of the French toward Lake Chad. In his book published in 1987, Triaud describes the move to the south in these words:

> "En un demi-siècle, le siège de la Sanûsiyya n'a cessé de se déplacer vers le sud. Cette longue trajectoire, qui passe par Jaghbûb (confins egyptiens) et Kufra (extrême sud de la Cyrénaique) souligne l'importance de l'axe trans-saharien et de la vocation africaine dans l'évolution de la confrérie à cette époque[121]".

4.92 The power enjoyed by the Senoussi in Kanem is demonstrated by the arrival in 1900 of two groups of Tuareg who had come from the region of Damergou, between Aïr and Zinder, where they had been fighting against the French forces. The arrival of the first Tuareg group was announced to the zawiya of Bir Alali in a letter from their sheikh, Sayyid Abdl al-Qadir. Referring to an earlier letter received from Bir Alali, he wrote:

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[120] The same map appears above in reference to para. 3.54.

[121] Triaud, op. cit., p. 19. (A copy of this page is attached as Exhibit 17.)

> "Sachez d'une façon assurée que mes frères de la région de Damergou (Damargû) sont venus me rejoindre avec leur familles et leurs troupeaux ... J'attends les pluies; de plus je n'ai de raison d'habiter ce pays qu'avec l'autorisation de Sidi Ahmad al-Rifi et de Sidi al-Barrani; sans leur permission, je prends Dieu à témoin que je n'y séjournerai pas un instant ... Les intérêts du territoire étant entre vos mains, traitez bien ceux qui vous approchent. N'attendez de nous aucune mauvaise action; il n'y a que le bien et la paix de notre côté[122]."

Having authorized the Tuareg's establishment at Kanem, the Senoussi sought to assure their well being. In a letter dated 20 July 1900 from the Head of the Senoussi in Gouro to the sheikh of the zawiya at Bir Alali, the Senoussi's concern to take care of these newcomers was stressed:

> "Traitez bien vos voisins qui ont fui les Chrétiens et qui s'en sont affranchis; il s'agit de nos frères les Touareg. Recommendez qu'on ne leur nuise pas, mais qu'on veille sur eux; ce sont des étrangers et des voisins auxquels ils faut accorder le droit des voisins (l'hospitalité)[123]".

4.93 The arrival of the Tuareg groups in Kanem risked creating a difficult situation with regard to the other tribe already established there, the Awlad Sulaiman[124]. It will be recalled that the Tuareg had almost destroyed the latter in the 1850s[125], and there had been other conflicts in subsequent years. The Senoussi were well aware of these facts in 1900, and were soon obliged to put into practice one of the sources of their power and authority in their relations with the local tribes - the role of conciliation and arbitration. In fact the Senoussi wielded the same sort of authority as did an Arab sheikh over the families of his tribe or among different tribes in a tribal system ruled by him. In this regard, it has been said that:

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[122] Ibid., p. 87, Letter No. 2. Emphasis added. (A copy of the letter is attached as Exhibit 17.)

[123] Letter No. 3, in Triaud, op. cit., p. 90. (A copy of the letter is attached as Exhibit 17.) It should be noted that the letters outlined in Triaud's book have been translated into French from Arabic. In Letter No. 6, of 2 October 1900, the advice is repeated for the arrival of a second group of Tuareg: "Faites attention aux Touareg qui sont chez vous; s'il en arrivait d'autres, en plus des premiers, ils seront également bien traités. Recommandez, à leur sujet, que personne parmi les gens de la région ne les incommode", ibid. p. 98. (A copy of the letter is attached as Exhibit 17.) In the introductory study, p. 51, Triaud says: "A lire cette correspondance, les émigrants toureg apparaissent comme des protégés particulièrement choyés de la confrérie."

[124] The first group of Tuareg was supplemented by other groups, so that in about a year the Tuareg totalled some 2,000 - 3,000 warriors, according to Triaud, op. cit., pp. 52-53.

[125] See, para. 4.84, above.

> "L'autorité de la Sanûsiyya dans le désert est fondée sur la capacité d'arbitrage et de médiation. En interrompant les vendettas en chaîne et en s'efforçant de désamorcer les conflits, la confrérie offre une instance d'appel et un lieu de négociation neutre. La peur du sacré, entretenue par différents rîtes, stratégies et discours, permet à la confrérie d'exercer cette autorité sans jamais recourir directement à la force armée[126]."

4.94 It is worthwhile to pursue this subject, for it demonstrates the temporal role of the Senoussi. To prevent conflict between the Tuareg and the Awlad Sulaiman, the Head of the Senoussi wrote to the Sheikh of the Awlad Sulaiman on 1 December 1901 that:

> "Vous êtes, par la volonté de Dieu, dans l'amitié du Maître (Muhammad al-Mahdî) ... Nous vous prions de vous occuper des affaires concernant la zaouia. Formez un seul parti (Yad Wâhida) avec les Touareg et vous mériterez ainsi à satisfaction et les bénédictions du Maître et de tous[127]."

In another letter, the paramount status of the Awlad Sulaiman in Kanem was made clear by the head of the Senoussi:

> "Je vous recommande de prendre soin de nos hôtes et les vôtres, nos frères les Touaregs. Ils sont chez vous l'assistance divine. Empêchez les Kerdi (ou Krida) (Aknâd) et autres de leur nuire. Si vous les traitez avec égards, tout le monde là-bas en fera autant. S'il émanait, de leur part, des faits qui exigeassent de leur adresser des observations, notre frère, le shaykh Al-Barrânî, le ferait et vous dispenserait de vous en occuper[128]."

4.95 In one instance, when a conflict arose among different groups of the Awlad Sulaiman due to the Tuareg presence in Kanem, the Head of the Senoussi called the leaders of the two opposing groups to Gouro. He reported later to his representative, the sheikh of Bir Alali, that a reconciliation had been reached, saying the following:

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[126] Triaud, op. cit., p. 57. (A copy of this page is attached as Exhibit 17.)

[127] Triaud, op. cit., Letter No. 28, pp. 148-149. (A copy of these pages is attached as Exhibit 17.) The Senoussi Head was unaware when writing this letter that Sheikh Ghayth had been killed on 9 November 1900 by the French forces near Bir Alali.

[128] Triaud, op. cit., Letter No. 29 of 5 December 1900, pp. 150-151. (A copy of these pages is attached as Exhibit 17.)

> "Chacun des deux shaykh, Ghayth et Sharf al-Din, a le désir d'améliorer la situation et les relations par leur paroles et leurs actes futurs. S'il se rendent auprès de vous avec la paix, notre désir est que vous réunissiez les deux parties dans un même lieu, pour les réconcilier, afin qu'ils ne forment qu'une seule fraction, un seul campement ... Si un désaccord survenait entre eux pour un fait quelconque, ils vous en saisiraient. Dans le cas où l'un d'eux chercherait à faire rompre cette réconciliation ou à y porter atteinte par le trouble ou d'autres procédés, nous serions affranchis de lui; il ne ferait plus partie des nôtres et nous ne compterions plus avec lui[129]."

4.96 The Senoussi correspondence found in the Bir Alali zawiya reveals the continued attention being given to French progress eastward after the conquest of Zinder in 1898. In a letter addressed to the sheikh of Bir Alali on 23 July 1900, the Head of the Senoussi took the zawiya chief to task for not following the French moves more closely, for the enemy (the French) "a agité depuis l'an dernier la question du Kanem, désirant ce pays". He warned that, although due to the Senoussi the French had not yet occupied the country-

> "... cependant l'ennemi ne cessera pas de s'ingénier à prendre ses mésures jusqu'à ce qu'il atteigne son but ... Si tu ne prends pas mieux tes précautions ils te prendront à partie[130]."

He gave these instructions to Sidi al-Barrani:

> "Fais-toi renseigner de chaque direction, et informe-moi immédiatement de la réalité des faits, si tu ne viens ici en personne[131]".

4.97 It was at this time that a false picture of the Senoussi was being circulated in Europe[132]. The distorted image was that of the Senoussi as a numerous, powerful military force dedicated to the annihilation of the French in

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[129] Triaud, op. cit., Letter No. 3 of 20 July 1900, pp. 89-90. (A copy of these pages is attached as Exhibit 17.) However, conflicts among the two factions of the Awlad Sulaiman followed in the next month, as indicated in fn. 1, p. 90 and pp. 57-58 of Triaud.

[130] Triaud, op. cit., Letter No. 16 of 18 July 1901, pp. 123-124. (A copy of these pages is attached as Exhibit 17.)

[131] Ibid.

[132] See, paras. 3.70-3.71, above.

Africa. Although they considered the French as enemies, the Senoussi had not preached the jihad or "guerre sainte" against them. Nor had they attacked the French, contrary to what was reported in Europe, particularly in Paris, at the time. Quite to the contrary, the Senoussi had only adopted a strategy of defense. They had arranged the reinforcement of the local military forces of the Awlad Sulaiman in Kanem with those of the Tuareg. (The Senoussi Order itself was not a military force at all; what capability they had depended on the tribes that they recruited and organized.) The Senoussi avoided any armed confrontation with the French until the first, unsuccessful attack on the zawiya at Bir Alali by Captain Milliot in December 1901. The strategy of the Senoussi has been described in the following way by a contemporary French authority -

> "... sans exposer les forces de la confrérie à un affrontement inégral, (elle) permettrait de détourner la progression française vers d'autres régions. L'établissement d'une frontière stable avec les Infidèles - ce qui est, au demeurant, une position tout à fait orthodoxe sur le plan religieux - était probablement au fond de leur pensée. C'est d'ailleurs ce qu'ils essaieront d'obtenir au Borkou au cours des années suivantes[133]."

This was the view of the British authorities and experts at the time these events were taking place[134].

4.98 There is another interesting aspect of the Senoussi presence in Kanem. The Bir Alali correspondence shows that at the time of European expansion in the area, the Sultan of Baguirmi had approached the zawiya, as did the Sultan of Dar Fitri, a country between Kanem and Ouadaï whose peoples were vassals of the latter. Moreover, the Senoussi Order continued to have influence in Ouadaï in spite of troubles provoked by Sultan Yussuf's successor, who did not have the same close relationship with the Senoussi that Sultan Yussuf had enjoyed. Thus, while organizing the local powers in Kanem at the time, the Senoussi maintained relations with the other African States extending east of Lake Chad.

(b) The French Wars, 1900-1909

4.99 In this period, three dates stand out in connection with the French conquest in the areas surrounding Lake Chad: 22 April 1900, when

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[133] Triaud, op. cit., p. 62. (A copy of this page is attached as Exhibit 17.)

[134] See, paras. 3.70-3.71, above.

Rabbah's forces were destroyed at Kousseri on the Chari River; 20 January 1902, when the zawiya of Bir Alali in Kanem was destroyed; and 2 June 1909, when French forces entered Abéché, in Ouadaï[135]. As these dates indicate[136], the French conducted three separate wars during the period against the indigenous peoples and organized societies. These were (i) against Rabbah's Sultanate, (ii) against the local tribes in Kanem assembled by the Senoussi and (iii) against the Sultanate of Ouadaï. The locations where these wars took place reveal the limited northern reach of the French presence in the area between 1900 and 1909: it did not extend north of 15° N. latitude.

(i) The First French War : Against Rabbah

4.100 With regard to the first French war - against Rabbah -, which ended in 1900, these facts are noted. By the 1890s, the power of both the Sultanates of Baguirmi (in the area east of the Chari river) and Bornou (in the area south of Lake Chad) was decaying, and their place had been assumed by the Sultanate of Ouadaï, then the leading power in the area. But from 1879 onwards, a chief of Sudanese origin, Rabih Fadl Allah - called Rabbah - had proceeded from the Nilotic Sudan into the Bar-el-Ghazal and Chari areas with well-trained armed forces - the "bandas" - and had taken control over the Sultanate of Dar-Kouti and Dar-Rounga, attacking the Sultanate of Baguirmi and occupying Kouka, the capital of Bornou, on 9 May 1883[137]. From his new capital at Dikwa, 50 kilometres south of Lake Chad, Rabbah ruled the old Kingdom of Bornou, exercising control over wide areas to the east and south that formerly were under Baguirmi and Ouadaï sovereignty. He even tried to advance to the Hausa States further to the west[138].

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[135] Histoire Militaire de l'Afrique Equatoriale Française, Paris, Imprimerie Nationale, 1931, p. 237. (Pursuant to Article 50, paragraph 2 of the Rules of the Court a copy of the Histoire Militaire de l'Afrique Equatoriale Française has been deposited with the Registrar.) (Copies of all pages cited are attached as Exhibit 26.)

[136] A fourth date, 27 November 1913, when the zawiya of Aïn Galakka was occupied by French forces, will be considered below.

[137] Kouka lies just west of Lake Chad. See, Map No. 31 appearing at para. 4.25, above, where it is spelled "Kuwka".

[138] On Rabbah's progress in the area, see, Hillam, W.K.R.: "The Itinerary of Rabih Fadl Allah (1879-1893)". Bulletin of IFAN, January 1968, pp. 165-183. See, also, Gentil, E.: La Chute de l'Empire de Rabah, Paris, Hachette, 1902.

4.101 Rabbah's Sultanate, therefore, was centrally placed with regard to the lands south of Lake Chad, a position that permitted him to control the trade through the caravan routes going to the Mediterranean from the Sudan. As a result, he became a threat not only to Baguirmi and its commercial activities but also to French colonial expansion in the areas neighbouring Lake Chad. Accordingly, Sultan Gaorang of Baguirmi asked for French support, entering into a protectorate treaty in September 1897, signed by Gentil[139]. This led to reprisals by Rabbah a year later, who ravaged the country; and when a French column under the command of Lieut. Bretonnet was sent to aid Sultan Gaorang, it was destroyed by Rabbah's forces at Tobgao on 17 July 1899, a demonstration of the latter's power in the Chari area.

4.102 This led to the war against Rabbah. French forces under the command of Gentil attacked him at Kouno on 29 October 1899. The result of the battle was inconclusive, and the French were obliged to retreat to Fort Archambault. Rabbah's forces withdrew to the north. In 1900, however, the French forces that had come from Senegal and Algiers in France's three-pronged advance on the region of Lake Chad[140], met to the south of Lake Chad. They were joined later by other forces coming from the Chari under the command of Gentil. On 22 April 1900, the French launched a final attack against Rabbah at Kousseri. In the course of the battle Rabbah was killed and his forces were largely destroyed, the French suffering the death of Commander Lamy. So ended Rabbah's Sultanate, although his son, Fad-el-Allah, continued the fight until September 1901. From that moment on, in the words of the Military History of French Equatorial Africa, France considered that "la voie est libre pour d'autres tâches"[141].

(ii) The Second French War: Bir Alali

4.103 Shortly after Rabbah's defeat at Kousseri, a French Decree of 5 September 1905 established in the French Congo Territory the

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[139] On the contents of the Treaty and the attitudes of Sultan Gaorang, see, Largeau: "Rapport sur la situation de la région du Tchad en février 1903 au point de vue politique, militaire, économique et financier", dated 1 March 1903, pp. 5-6, Bib. Inst. de France, Ms. 6003 (2). The Report is attached as Exhibit 27.

[140] See, para. 4.54, et seq., above.

[141] Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 238. Exhibit 26. On the French attacks against Fad-el-Allah forces in 1901, see, ibid., pp. 248-253.

"circonscription spéciale dite 'territoire militaire des pays et protectorats du Tchad'", and Lieut. Colonel G. M. Destenave was appointed as Commissaire du Gouvernement par interim[142]. Under his command, the second French war was conducted, starting in 1901. This time the war was against the Senoussi as organizing power in Kanem, and against the Senoussi tribes. The main objective was the zawiya at Bir Alali[143].

4.104 To this end, a French military post was established at Massakory, near the extreme eastern point of Lake Chad, on 27 October 1901. From there the French forces proceeded to Ras-el-Fil, where Lieut. Colonel Destenave ordered that a small force, under the command of Captain Milliot head to Bir Alali and try to take the zawiya by surprise[144]. The attempt turned into a disaster for the French forces: attacked by the Tuareg and the Awlad Sulaiman, they were obliged to retreat to Mao in very bad condition. Captain Milliot was killed near Bir Alali. In this battle, the French forces had been surprised by a new tactic used by the Tuareg, which has been described in this way:

> "Il (the French Commander) ne songeait, au début du moins, qu'à parer aux charges des cavaliers Touareg. Or, sous l'inspiration des Senoussistes Tripolitains, les Touareg abandonnèrent complètement leur tactique habituelle. Le fusil seul fut employé, les tireurs s'approchèrent en rampant et ne tirèrent qu'à coup sûr. Ceux qui étaient tués étaient immédiatement remplacés par d'autres qui s'emparaient du fusil et des cartouches pour continuer le combat.[145]"

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[142] See, Triaud, op. cit., pp. 21-22, for a description of Lieut. Col. Destenave, who took the place of Gentil, when he returned to France. Triaud says that: "Gentil était favorable à une pénétration progressive et pacifique, Destenave à une administration militaire appuyée sur des interventions musclées".

[143] On the choice of Bir Alali as objective, Triaud, op. cit., pp. 29-30, set out several reasons. First, that it was well-watered and had a fortified zawiya. Second, its importance as a central point in Kanem, being placed "au débouché de deux routes trans-sahariennes, celle qui vient de Tripoli, par Bilma (au Niger), et celle qui vient de Benghazi, par Koufra et Gouro ...". Finally, Bir Alali was the place from which the Senoussi extended their organizing power into Kanem, opposing the French presence in the area. So it became a symbol to destroy, particularly after the defeat of Captain Milliot on 9 November 1901.

[144] Largeau: "Rapport sur la situation de la région du Tchad en février 1903", op. cit.. According to the Report, Captain Milliot was ordered "de faire une reconnaissance au Kanem et de tenter une surprise sur la zaouia de Bir Alali s'il trouvait l'occasion favorable". Exhibit 27.

[145] Lieut. Poupart: "Lutte contre le Senoussisme (1901-1902)", undated, quoted by Triaud, op. cit., p. 24. (A copy of this page is attached as Exhibit 17.)

This episode attributes the ferocity with which the French military arrivals were resisted by the indigenous peoples led by the Senoussi.

4.105 According to Triaud, this first attempt by the French to occupy Bir Alali demonstrated "que le Senoussiste n'accepteraient pas la conquête française sans résistance". The resistance of the Senoussi to European colonial expansion - whether French or Italian - was to last for more than 30 years. But at Bir Alali it was also demonstrated that "il n'y avait pas d'agression délibérée de leur part (that is, on the part of the Senoussi). L'initiative venait des troupes françaises ..."[146].

4.106 In any case, the French defeat of 9 November 1901 at Bir Alali had certain consequences. First, Lieut. Colonel Destenave retreated to Fort Lamy (N'Djamena) with most of the French forces in Kanem; and the Tuareg, assembled at Bir Alali, marched towards Mondo, where another battle took place[147]. Second, the defeat was a serious blow to French prestige in the area. As described by a French officer present at the time:

> "Nous ne pouvions pas de notre côté rester sur un tel échec; notre autorité en souffrait au Chari et les soldats de Barrani (Sayyid al-Barrani, sheikh of the zawiya at Bir Alali), grossissant les faits, envoyaient déjà vers le sud algérien la nouvelle de la grande victoire du Croissant sur les infidèles[148]."

So, to occupy Bir Alali became an urgent goal, and Commander Tétart assembled at N'gouri a column of about 600 men with artillery to attack the zawiya. On 20 January 1902, Bir Alali was overwhelmed by the French forces, after an heroic defense by the Tuareg, the Awlad Sulaiman and other peoples assembled by the Senoussi[149].

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[146] Triaud, op. cit., p. 25.

[147] Letter of Captain Dubois, quoted by Triaud, op. cit., p. 25. On the combat at Mondo, see, Histoire Militaire de l'Afrique Equatoriale Française, op. cit., pp. 255-257. (A copy of these pages is attached as Exhibit 26.)

[148] Captain Fouque, quoted by Triaud, op. cit., p. 25. (A copy of this page is attached as Exhibit 17.)

4.107 The occupation of Bir Alali on 20 January 1902, however, did not result in the French moving further north from Kanem into Borkou. For most of the forces assembled by the Senoussi at Bir Alali had remained in Kanem after abandoning the zawiya; and they launched an attack to regain Bir Alali - which had in the meantime been renamed Fort Pradié by the French - in June 1902. This attack was followed by two others in August and December of that year. These attempts failed. As a consequence, the Senoussi abandoned their objective of recovering Bir Alali, suspended their offensives, and adopted a dual tactic for resisting the French colonial advance: (i) to assemble the forces of indigenous populations at the zawiya of Aïn Galakka, in Borkou, sealing the area off from French influence[150]; (ii) to press forward with the political campaign directed at Ouadaï, and by this means to strengthen, through the help of a powerful ally, the opposition to French colonial expansion in the area.

4.108 It was in this context that a development of considerable significance occurred in 1902-1903. In spite of the encounters between the French forces and the Senoussi tribes opposing them, a de facto territorial arrangement was established in the area north of Lake Chad: the Senoussi tribes, whose direction was centered at Aïn Galakka, remained in control of Borkou and the northern part of Kanem; French military posts were limited to locations no further north than Bir Alali. This situation was sketched on a map included in the report of Colonel Largeau of 1 March 1903 concerning the distribution of French forces in the area, which is reproduced here (Map No. 33). On the map, Bir Alali (or Fort Pradié) appears as the most northerly military post of the French, reinforced by a line of other military posts further south. These were: N'Guigmi to the west, to keep an eye on the Tuareg in the Zinder area; Bol and N'Gouri just south of Bir Alali, in southern Kanem; and, to the east, Massakory, also close

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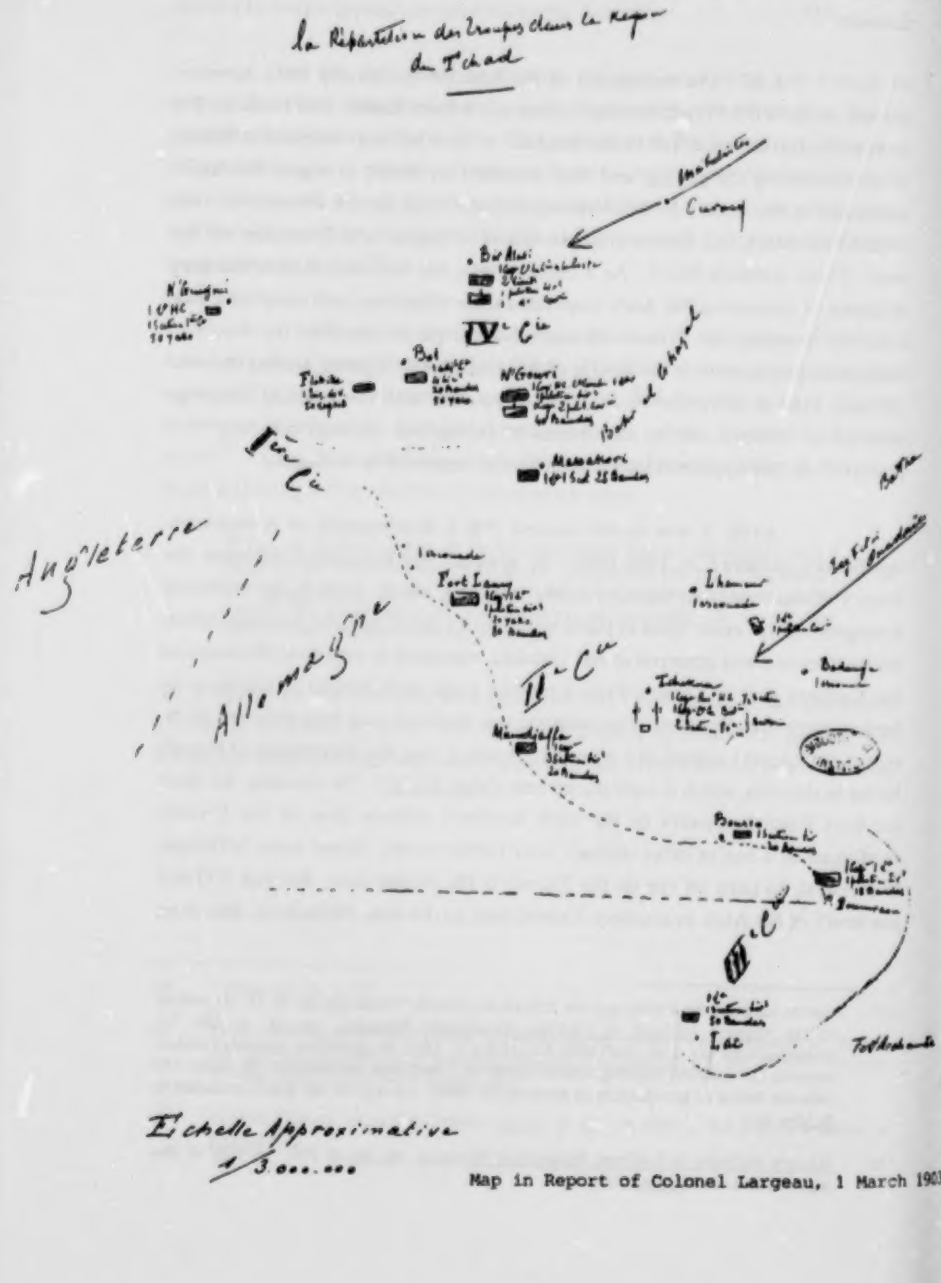
[149] On the losses on both sides, see, the references given by Triaud, op. cit., p. 27. According to the Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 260, "La résistance ennemie à Bir Alali avait été acharnée. Dans les premières tranchées étaient entassés 139 cadavres Touareg, Ouled Sliman ou Tripolitans senoussistes. En outre, 150 cadavres furent retrouvés épars en avant de Bir Alali". (A copy of this page is attached as Exhibit 26.)

[150] Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 268. (A copy of this page is attached as Exhibit 26.)

Map No. 3



Map in Report of Colonel Largeau, 1 March 1903 to Lake Chad, which served as a link with the military forces in the Chari area further south, as well as a point from which to keep track of events in Ouadaï.

4.109 According to Largeau's 1903 Report, although the situation of the French in west and south Kanem had improved, to the north and east it had become more difficult due to the attacks made in 1902 by the Senoussi tribes to recover Bir Alali. The Report went on to say that -

> "... ces attaques incessantes nous usent si bien qu'après deux autres affaires aussi meurtrières que celles de décembre, nous nous trouverions faute de monde, dans l'impossibilité d'entretenir dans Bir Alali une garnison dont le nombre réponde aux nécessités de la situation[151]."

Largeau's concluding remarks as to the political situation existing in the area in 1903 were these-

> "... ce qui ressort d'un examen d'ensemble de la situation, c'est que nous sommes ménacés sur les bords du Chari par deux puissances redoutables: l'une spirituelle, le Mahdisme ... L'autre temporelle, le Ouadaï avec lequel nous sommes en état d'hostilité ... Notre politique générale doit tenter à éviter l'union de ces deux puissances; ... Mais par quel moyen maintenir cette division entre le Senoussisme et le Ouadaï qui est le principal élément de notre securité dans ces contrées?[152]"

For Colonel Largeau, a political approach to the Senoussi was excluded: he regarded the new Head of the Senoussi as a man "irreconciliable, puisque notre succès constitue sa perte". The alternative, thus, was a political approach to Ouadaï; but it was indicated in the Report that "la base naturelle d'une semblable politique devrait être une force respectable à Fort Lamy".

4.110 So, during the years 1903-1909, the French used force against the indigenous peoples organized and led by the Senoussi organization and the indigenous peoples of Ouadaï under the rule of the Sultan. With regard to the Senoussi tribes, an attack was launched against the *zawiya* at Faya in 1906, burning it to the ground; and then, French forces unsuccessfully attacked the *zawiya* at Aïn Galakka, in April 1907, and again in September 1908.

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[151] Largeau, "Rapport sur la situation de la région du Tchad en février 1903", *op. cit.*, Partie politique, Kanem. (A copy of this is attached as *Exhibit* 27.)

[152] *Ibid.*

4.111 As a result, Aïn Galakka became the main French objective of this period. But the attacks against the zawiya did not affect the situation elsewhere in Kanem and Borkou. The local tribes assembled by the Senoussi continued to control northern Kanem, Eguei and Borkou from Aïn Galakka, which was then under the command of a remarkable chief, Abdallah Ben el-Fedhil, called Abdullah Tooueur. The French said of him "il releva de ses ruines la zaouïa et forma des nombreux rezzous contre les populations ralliées[153]". The official French history of these events contains this comment:

> "L'ennemi n'osa pas inquiéter la colonne ni durant son séjour au Borkou, ni pendant le retour. Mais il ne devait pas tarder à fondre de nouveau sur le Kanem et le Bahr-el-Ghazal[154]."

4.112 Thus, the French forces remained in Kanem, with their most northernly military post at Ziguei - a place close to Bir Alali and Mao. In spite of occasional penetrations into Borkou by the "méharistes" (troops mounted on camels, usually Senegalese) resulting in some success against the rezzous coming from the north as a result of the creation of this new military post at Ziguei, the position of the French forces still had not much improved. As recorded by the official French history:

> "Toutefois la sécurité des confins nord du Kanem était loin d'être obtenue. Les véritables ennemis de la France étaient à Aïn Galakka et à Gouro. En 1909, allors que toute l'attention allait être tournée du côté du Ouadaï, les Senoussistes allaient faire subir aux populations soumises des pertes importantes et même infliger à une unité méhariste un échec retenissant.[155]"

(iii) The Third French War: Ouadaï

4.113 Turning to the situation in Ouadaï - the third French campaign, - where battles were fought during the period 1900-1909, some of the more significant facts are these. From the beginning of the 19th Century, the Sultanate of Ouadaï had been the rising power in the area, controlling Kanem to the west and the pagan lands of Dar Sila, Dar Kouti, Dar Rounga and Salamat, in the south. Its power further increased under Sultan Mohammad al-Sharif (1835-1858), who opened Ouadaï to Senoussi influence[156]; as well as under Sultan Yusuf (1874-1898), who also maintained close ties with the Order, improving trade from Abéché through the caravan route to Koufra. However, the situation in Ouadaï changed during the disputed succession of Sultan Ibrahim (1898-1900). For in 1900, two contending claimants to the throne, Ahmed Ghezali and Mohammed Saleh (called Doudmourrah), were elected as Sultan, while a third pretender, Acyl, took refuge with the French at the end of 1901[157].

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[153] Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 282. (A copy of this page is attached as Exhibit 26.)

[154] Ibid., p. 290. Exhibit 26.

[155] Ibid., p. 294. The battle referred to was the one at Ouchenkalé in November 1909, where "... un rezzou borkouan fit subir fin novembre, un désastre complet à un détachement de la 4ème compagnie". See, pp. 359, et seq. Exhibit 26.

4.114 This situation did not enhance the relations between Sultan Doudmourrah and the French or assist the French either to control the Sultanate of Dar el-Fitri or to maintain their presence in southern Kanem after 1901, for both countries had formerly been under Ouadaï sovereignty. Up until 1906, only a few incidents had arisen between French and Ouadaï forces. However, in 1906, the French ordered the return of Acyl in order to create "un noyeau de fidèles et rallier autour de lui les Ouadaïens acquis à l'influence française"; and they conducted a series of military incursions into the territory of Ouadaï, establishing a military post at Ati[158]. In response, Sultan Doudmourrah launched a series of attacks against French forces in 1908, and the main battle began. In the end, Abéché was occupied by the French on 2 June 1909, and Acyl was proclaimed Sultan of Ouadaï. But the war between the powers of Doudmourrah and French forces continued. Ultimately, Acyl was deposed in 1912, and Ouadaï became administered directly by French military forces[159].

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[156] Wright, Libya, Chad and the Central Sahara, op. cit., pp. 86-88, referring to Nachtigal's travels into Ouadaï in 1873-1874. Nachtigal had written that the Sultan was "the most faithful adherent of the Sanusiya". On relations between Ouadaï and the Senoussi, see, also, Ciammaichella, op. cit., pp. 43-46.

[157] Largeau, "Rapport sur la situation de la région du Tchad en février 1903" op. cit., Partie politique, Baghirmi, p.1. Exhibit 27. Asyl, however, was sent to the French Congo in 1903, after attacking a French column, only returning in 1906.

[158] Histoire Militaire de l'Afrique Equatoriale Française, op. cit., pp. 307-308 and 311, stating that, "En 1908, ... Doudmourrah va chercher le combat. L'attitude des français depuis 1902 l'entretenait d'ailleurs dans cette idée qu'ils avaient peur de se mesurer avec lui. Puisque le commandement français n'avait pas encore essayé de prendre Abéché, c'est qu'il redoutait les troupes du Ouadaï. L'installation d'un poste à Ati sembla une provocation et leva les dernières hésitations du sultan". Exhibit 26.

[159] Ibid., p. 410. Exhibit 26.

(c) The Limited Extent of a French Presence in the Area During the Period 1900-1909

4.115 After Rabbah's defeat at Kousseri, a French Decree (of 5 September 1900) was issued reorganizing the territory of the French Congo. It established a special district or "circonscription spéciale" called "territoire militaire des pays et protectorats du Tchad"[160]. According to Article 1 of the 1900 Decree:

> "Cette circonscription comprend
> 1°. Le bassin de la rivière Kemo;
> 2°. Au nord, le bassin du Chari et de ses affluents, à l'exception des concessions déjà accordées, ainsi que les pays placés sous la domination française en vertu des conventions du 14 juin 1898 et du 21 mars 1899, y compris le Baguirmi, le Oudaï et le Kanem[161]."

4.116 The exception in the second paragraph, concerning "concessions déjà accordées", referred to areas of Bornou and Chari included in the Franco-German agreements of 1894. Except for Baguirmi - under French protectorate from 1897 and subject to military control from Fort Lamy starting in April 1900 - an express reference was made only to Baguirimi, Kanem and Ouadaï as countries included within the scope of the 1898 and 1899 Anglo-French agreements. Eguei, Borkou, Ennedi, Ounianga and Tibesti were not mentioned. Furthermore, this paragraph refers to "les pays", not to a single entity.

4.117 According to the Decree, the territories included in the "circonstances spéciales" were said to be "sous la domination française". This was clearly wrong. As already seen above, the Anglo-French agreements of 1898 and 1899 established only "spheres of influence"; they did not grant any title to the territory[162]. When the Decree was issued, in September 1900, the effective presence of the French in the area neighbouring Lake Chad had not even extended to southern Kanem, and certainly not to Bir Alali, which was not occupied until January 1902. As a consequence, France had no basis whatever for asserting title to the territories of Kanem and Ouadaï at the time of the Decree, and certainly not to areas north of these regions, which in any event had not been mentioned in the Decree.

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[160] See, para. 4.103, above.

[161] Journal Officiel de la Republique Française (J.O.R.F.), 8 September 1900, p. 6265. Exhibit 28.

[162] See, para. 4.44, et seq., above.

4.118 After the French attacks on Bir Alali in 1901 and 1902, Lieut. Colonel Destenave's personal policy of military intervention was refused the backing of the French Government, as reflected in the French Decree of 5 July 1902, which again reorganized the territory of the French Congo[163]. In fact, the Report of the Minister of Colonies presenting the Decree, after indicating the dangers of unilateral actions taken by a "Commissaire du gouvernement" exercising exceptional powers, made a distinction within the French Colony of Congo between two regions: the one to the south was open to colonisation; the other was not. This second region was described this way in the Report-

> "... moins accessible à la colonisation, s'étend au nord du bassin du Congo jusqu'au Tchad, et dans laquelle le rôle de la France doit être limité présentement à une oeuvre de surveillance et de pacification, en face de populations dont on pourra seulement peu à peu apaiser les résistances et dissiper les préventions[164]."

4.119 Largeau's Report of March 1903 reflected this new policy, which had been adopted largely due to the lack of financial resources needed to strengthen French military forces in the area. The location of the French military posts existing at that date, as indicated above (Map No. 33 referred to in paragraph 4.108), illustrates the contradiction between what the French Decree of 5 September 1900 claimed and the absence of any effective authority actually being exercised by the French in the territories to the north and east of Lake Chad. This situation was not modified by a third French Decree, issued on 11 February 1906, which created the autonomous administrative colony of "Oubangui-Chari-Tchad", which included:

> "4°. Le territoire militaire du Tchad comprenant au Nord de l' Oubangui-Chari, l'ensemble des régions placées sous l'influence de la France en vertu des conventions internationales et ne dépendant pas du gouvernement général de l'Afrique occidentale française[165]."

The situation on the ground remained the same: there was no exercise of effective authority by the French north and east of Lake Chad.

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[163] Triaud, op. cit., pp. 179-188.

[164] J.O.R.F., 6 juillet 1902, pp. 4777-4778. (Emphasis added.) (A copy of these pages is attached as Exhibit 29.)

[165] J.O.R.F., 11 février 1906, pp. 981-982. (A copy of these pages is attached as Exhibit 30.)

4.120 The subsequent French occupation, in June 1909, of Abéché, the capital of Ouadaï, lying to the east of Lake Chad and south of 14° N latitude, did not affect the situation then prevailing in northern Kanem, Eguei, Borkou and Ennedi. These regions remained under the authority and control of the indigenous peoples, organized and led by the Senoussi. In 1910, the French increased their forces in the area around Lake Chad and in Ouadaï. Their distribution shows the limited extent of the French military presence at that date. This is shown on Map No. 34. In Kanem, only two French military posts existed: at Ziguei and Mao. Thus, Ziguei was, in 1909, the most northerly point in Kanem at which the French had a military presence. Ziguei lies just south of 15° N latitude. In Ouadaï, the French forces were at Ati, in the Batha country, and at Abéché, Bir Taouil and Arada[166]. It should be noted that Arada, the French post furthest to the north at the time, lies almost exactly on the line of 15° N latitude.

SECTION 5. The 1910-1913 Interlude in the Area North of Lake Chad

(a) The Ottoman Military Presence in the Libya-Chad Borderlands and Its Background

4.121 According to some French sources, the Ottoman authorities traditionally were neither interested nor present in the region between Fezzan and Lake Chad. And it has even been said that "avant le début de 1911, on n'avait jamais entendu parler des Turcs dans le bassin du Tchad"[167]. These statements are incorrect and easily disproved by the evidence. However, before detailing the Ottoman presence in the borderlands, some remarks about the extent and nature of Ottoman interests south of Fezzan from 1880 onwards are in order.

4.122 It will be recalled from the earlier discussion that Ottoman interests in the Sudanic countries had been not only a reality but also a necessity due to the importance of the north/south trade, made possible by the caravan

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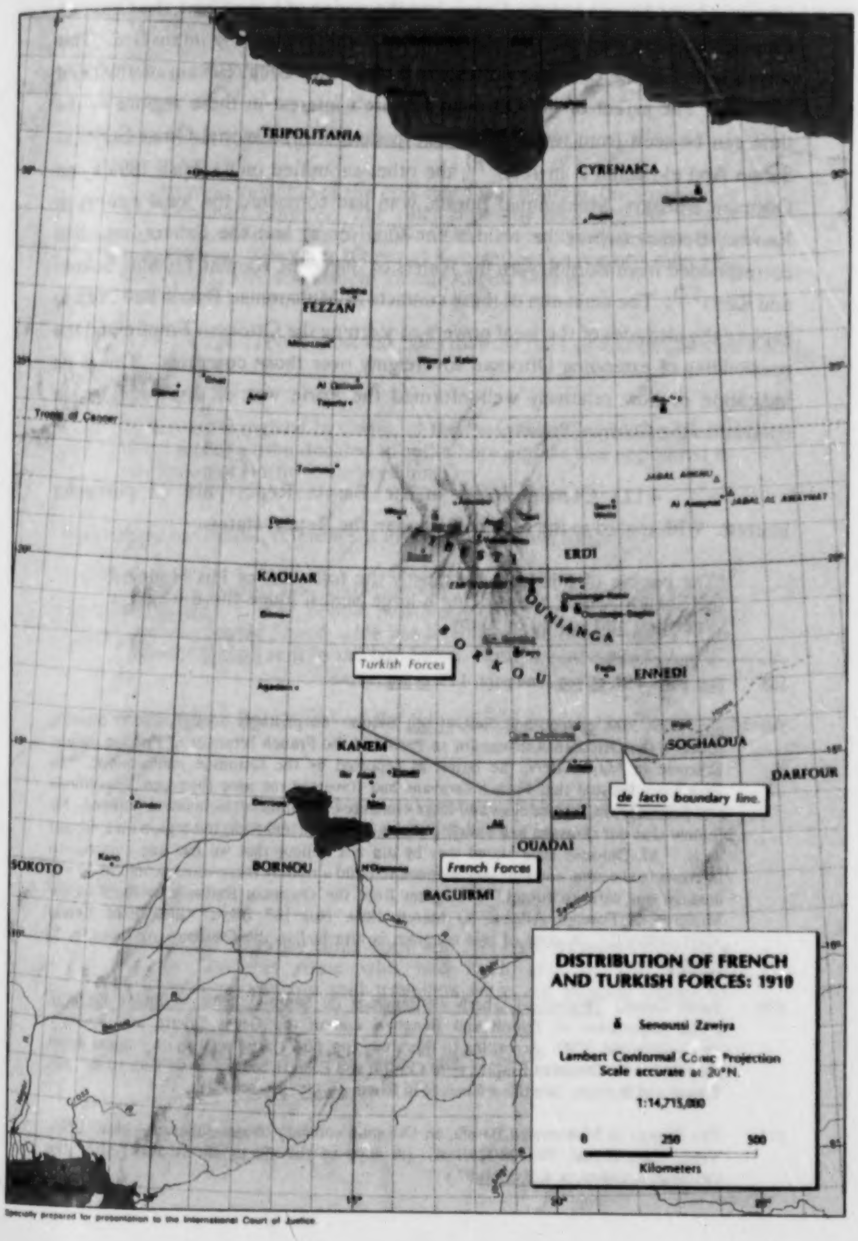
[166] Ibid., pp. 368-369.

[167] Ferrandi, J.: "La vérité sur l'occupation turque au Borkou, dans le Tibesti et l'Ennedi", Bulletin du Comité de l'Afrique Française, (B.C.A.F.) 1930, p. 391. The author, who was on the staff of Colonel Largeau, adds that - "C'est là un fait incontestable et dont nous pouvons apporter une preuve formelle par l'examen des archives des différentes zaouias du Borkou que nous avons occupées de haute lutte en 1913-1914." (A copy of this page is attached as Exhibit 31.)

Map.N°34



DISTRIBUTION OF FRENCH AND TURKISH FORCES: 1910

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routes, for the economies of Tripolitania and Cyrenaica[168]. After the French advances from Algeria and the Congo into the region of Lake Chad, the Ottoman Empire's concern over the protection of these interests greatly intensified. This was reflected in the Ottoman protests to France and Great Britain of 1890 and 1899[169]. The extent of the Ottoman Empire's interest in these regions at the time can be seen from two reports: one presented by Colonel Omar Subhi to Sultan Abd el-Hamid II in 1888[170]; the other submitted on 11 April 1894 by an Ottoman emissary, Muhammad Basala, who had contacted the local powers in Kaouar, Bornou (where he resided for four years) and the Sahara, and had corresponded from Bornou with the Rulers of Baguirmi, Kanem, Ouadaï, Sokoto and Kano[171]. The main aim of these contacts by Muhammad Basala had been to explore the attitudes of the local powers concerning the Ottoman Empire and the possibilities of extending Ottoman sovereignty over those countries. This is an indication of how relatively well-informed the Porte was of these regions, in contrast to the Colonial Powers.

4.123 Certain points in the Basala Report are of particular interest. With regard to the region of Kaouar, the Report states:

> "The people of this land are mostly the followers of His Holiness the Sheikh Senusi, there being a large Senusi lodge there which is venerated and visited by many."

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[168] *See*, para. 4.07, *et. seq.*, and para. 4.23, *et seq.*, above.

[169] *See*, para. 5.09, *et seq.*, and 5.49, *et seq.* below. Surprisingly enough, in the meeting between the Ottoman Ambassador in Paris and the French Minister of Foreign Affairs Délcassé in March 1899, the latter, as reported by the Ottoman Ambassador. "His Excellency insisted that French caravans had traversed the area (between Tripolitania and Kanem) on a regular basis and more concrete French installations were planned. He replied that our caravans had always plied the routes to and from the region on a regular basis. M. Delcasse then stated that he did not believe that we had any commercial interests in the area, and that they planned to build a railway there which would in no way damage our caravan routes." Telegram from the Ottoman Embassy at Paris to the Ministry of Foreign Affairs, 30 March 1899, No. 147 BBA. Yilidz Esas Evraki 35/231/100/102. (A copy of this telegram is attached in the Ottoman Archives, p. 1) *Exhibit* 97.

[170] Subhi Omar,: *Tarabulus-i Gharb we-Benghazi ile Sahra-yi kebir we-Sudan merkezi*, ("The Importance of Tripoli and Benghazi and of the Great Sahara and Sudan"), Constantinople, 1890. According to this study (pp. 66-71), the regions of greatest direct interest for the Ottoman Empire were Central and Eastern Sahara, from Tuat to Kaouar, Tibesti and Borkou, See the references in Rossi, *op. cit.*, pp. 340-341.

[171] The Report of Muhammad Basala, an Ottoman emissary to sub-Saharan Africa. BBA. Yilidz Esas Evraki 39/2128/129/118. (A copy of this document is attached in the Ottoman Archives, p. 4, *Exhibit* 97.)

As to Bornou, Muhammad Basala reported that:

> "At the time of Sultan Gazi Abdulmecid Khan ... the ruler of this land had been honoured with an Imperial ferman and a robe of honour."

He goes on to say that he gave the new ruler of Bornou-

> "... the most valuable of the gifts that I was bearing, the standard of the Ottoman Empire. The ruler promptly and with the utmost ceremony ordered that it be flown from his residence on feast days and Fridays. The ruler (Omer al-Kanemi) was a learned man who had special love and esteem for our August Master."

4.124 The Report indicates that the ruler of Kanem, Shaikh Abdel Gelil-

> "... is from Benghazi by origin, of the Awlad Sulaiman tribe. Some of his father's tribe decided to settle here and he was appointed by the Sultan of Bornu to succeed him."

With regard to Ouadaï, reference is made to a Senoussi lodge-

> "... which is venerated and visited by many who are very devoted to this tarika[172]. The people mostly speak Arabic. The ruler at the time was Sayyid Sharif ... He has long been the proud holder of an Imperial firman sent by the late Sultan Abdulmecid Khan."

When Muhammad Basala visited the Sahara and one of the Tuareg tribes, he reported that:

> "They told me that they were still proudly displaying a firman given to all Tuaregs by the late Sultan Selim Khan".

And he added:

> "Some time ago they came upon some French travellers travelling by the Gadamis route who had been sent by the French Government. As the said travellers were not bearing passports

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[172] "Tarika" is Arabic for "path" and, hence, "faith" or "belief".

> granted by the Exalted Caliphate, they killed them and took all their goods[173]."

4.125 Muhammed Basala concluded, after having visited the Sudanic countries and the Sahara, that "very little effort is required for the inclusion of these peoples in the Imperial Domains as Ottoman subjects", given that the populations were "mostly Muslim and have religious links with our Master". He made certain suggestions, among them that a special mission should be sent by the Porte "to Sheik Sanusi to win him to the just cause". He particularly emphasized the oases of Kaouar.

(l) Ottoman Presence in Tibesti

4.126 Turning now to the extent and nature of the Ottoman presence in the areas between Fezzan and Lake Chad, the regions of Tibesti, Borkou and Ennedi will be taken up separately. (The Ottoman installations are shown on Map No. 34 appearing at paragraph 4.120.) With regard to Tibesti, the first important development occurred in 1895-1897. Fearing French expansion from Algiers, the Toubou of Tibesti and the Kaouar oases asked Tripoli for protection, as already discussed above[174]. However, the Ottoman authorities at the time limited their assistance to reinforcing their garrisons at Ghat and Ghadamès; they stationed no military forces actually in Tibesti or in the Kaouar oases. The French took advantage of the situation, occupying Djanet in 1905, but not without a conflict with the Ottomans, who reoccupied the place in 1906[175]. To the south, in Aïr, French forces occupied Agadès in 1904 and returned there definitively in 1906. From there they progressed to the oases of Kaouar, establishing a military post in Bilma in 1907. The French Commander, Mouret, was ordered "de préparer l'occupation du Tibesti", 500 kilometers northeast of Bilma, but no action was taken[176]. Then, in 1907, French forces proceeded to the northern oases of Kaouar: Yat, Itchouma, Szegedin et Djado, which were closely linked with the Tibesti. This had the effect of disrupting the social structure of the region. However, this French activity was limited to the region of Kaouar to the west and north of Kanem and to the west of Borkou and Tibesti.

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[173] This was a reference to the mission lead by Colonel Flatters, which was decimated in February 1881, an event that halted French penetration into the Sahara from Algeria for many years. As to the French attempts to gain the support of Tuareg tribes bordering Ghat and Ghadamès, see, BBA Y.A. HUS 300/86 of 24 June 1894 and Communication from the Vilayet of Tripoli of 2 October 1894, No. 12. Y.A. HUS 309/40. Ottoman Archives, Exhibit 97. pp. 15-20.

[174] See, paras. 4.81, et seq., above.

[175] In July 1906, the kaimakham of Ghat, Abd el-Khader Djoumi, entered Djanet with military forces, which led to a protest from the French Ambassador at Constantinople. This event and its aftermath have been described as follows: "Ce fut l'origine de l'accord (non publié) de 1906 et de l'iradé du 21 août 1906 fixant le statu quo jusqu'à l'entente à intervenir. Jusqu'à 1909, les Français respectueux du traité se maintinrent à l'ouest du 6° de longitude". There were, however, other incidents between 1909-1910. See, Cortier, M.: "Les Turcs en Afrique Centrale. La Frontière Franco-Tripolitaine", Bulletin du Comité de l'Afrique Française, (B.C.A.F.) 1911, pp. 321-322. (A copy of these pages is attached as Exhibit 32.)

4.127 The Ottoman authorities quickly reacted to the French presence in Kaouar. As set out in a French document of 8 July 1907:

> "Mai Chaffami Chef du Tibesti s'est rendu à Mourzouk et a sollicité la protection des Turcs contre nous. Il a obtenu un drapeau turc et un groupe de quatre soldats... Il a quitté Mourzouk vers le premier Mai ... Il n'est pas impossible que la démarche de Chaffami soit le résultat du combat d'Aïn Galakka dont l'issue était connue à Mourzouk au passage des trois commerçants de Bilma.[177]"

It was reported that in 1908:

> "Mai Chaffami a reçu le titre de Kaimakam correspondant à peu près à celui du Chef de province. Il reçoit à ce titre une pension de la sublime porte. Un poste de gendarmerie est installé à Bardai (et) toute la population dépendant de Mai Chaffami reconnaisse (sic) la souveraineté turque ... Trois Fezzanais construisent un (blockhaus) à Bardai, la main d'oeuvre est fournie par les habitants de l'oasis à raison de 20 travailleurs par jour.[178]"

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[176] B.C.A.F., 1911, p. 324. See. Exhibit 32. The mission proposed to be undertaken by Captain Tilho but not authorized by the French authorities, referred to in para. 5.122, et seq., below, is part of this story.

[177] Correspondence, 31 July 1907-31 May 1908. French Archives Annex, p. 430. The fact is confirmed on 25 July 1907. The reference to Aïn Galakka concerned the first French attack, which was unsuccessful, against the zawiya of 21 April 1907, referred to in para. 4.109, above.

[178] In correspondence, 1 July 1907-31 March 1908, document dated 29 march 1908, French Archives Annex, p. 431; and "Rapport politique", April 1908. French Archives Annex, pp. 432. In the "Rapport Politique" of July 1908, following the arrival in Bilma of a caravan under the protection of Chaffami's son, the French authorities expressed the wish to gain the help of the Tibesti Derde "... et nous assurer ainsi le succès d'une pénétration pacifique, du moins dans la partie du Tibesti soumise ou prétendue soumise à l'influence de ce chef." This attitude, however, changed in 1909, when the presence of the Toubou of Tibesti in Kaouar was prohibited by the French. French Archives Annex, p. 433.

4.128 In July 1909 it was reported that the Derde of Tibesti, "... après un long séjour dans cette dernière ville (Mourzouk) est rentré récemment à Bardai avec quelques soldats Turcs détachés des troupes du Fezzan"[179]. By October 1910, the Ottoman authorities not only tried to occupy Yat, in the oases north of Kaouar, but they had reinforced their garrisons at various points, including Tibesti, thus establishing a network for future actions in areas south of Fezzan. In effect, as depicted in a French document:

> "L'autorité de Mai Chaffami est d'ailleurs appuyée de loin par le gouvernement de Mourzouk et de près par la garnison de 17 soldats blancs (probablement des Albanais) qui résident à Bardai et à l'action de laquelle est associé l'influence d'un Cadi envoyé de Tripolitaine ... La garnison de Tedjerré est installée. Elle (doit) comprendre une quarantaine de soldats. A Gatrum entre Tedjerré et Mourzouk se trouve également un détachement Turc.[180]"

4.129 Thus, the establishment of effective Ottoman authority in Tibesti, and the building of an Ottoman fort at Bardaï, occurred at least by March 1908, according to French military sources[181]. In 1911, a second fort was built at Bir Chirda, three kilometres from Yoo, near Zouar to the southeast of Bardaï[182]. This point permitted easy communication with Borkou. The local French authorities concluded as follows:

> "C'est l'occupation totale et effective du Tibesti que les Turcs préparent pour nous rappeler sans doute que les droits que nous tenons de la convention Franco-Anglaise de 1898 et de l'acte additionnel du 21 mars 1899 ne valent qu'en regard de l'Angleterre et que vis-à-vis des autres puissances d'après l'Acte de Berlin qui règle le droit public africain, une occupation effective est nécessaire pour rendre valable une acquisition du territoire ... .[183]"

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[179] "Rapport politique", July 1909. French Archives Annex, p. 434.

[180] "Rapport politique", October 1910. French Archives Annex, p. 436. Le Cadi is a judge as to all civil and personal matters, applying this Islamic sharia'a (Muslem law).

[181] For other dates, ranging from 1908 to 1911, see, Lanne, B.: Tchad-Libye, La Querelle des frontières. Paris, Karthala, 1982, pp. 36-39.

[182] Lanne, op. cit., p. 39, quoting a letter from Colonel Chapelle of 30 April 1977. The first reference to the second military post is made in a French document of 3 May 1911, "Au sujet de l'action Turque au Tibesti". French Archives Annex, pp. 440-441. The location of the post is indicated in a letter of 28 April 1912 from the officer commanding the Section of Itchousa.

[183] Note entitled "L'Action Turque à l'heure actuelle au Tibesti". French Archives Annex, p. 441.

4.130 As to the impetus behind the establishment of an Ottoman presence in Tibesti, the evidence points to the requests being made by the Derde, for at first the Senoussi did not favour this move[184]. In any case, it was a decision made by the Ottoman authorities in the vilayet of Tripoli; and as stated by Colonel Chapelle, the purpose of the two forts built in Tibesti was "... de résister à l'attaque d'une troupe moderne et non aux entreprises des Teda.[185]"

(ii) Ottoman Presence in Borkou

4.131 Turning next to the establishment of an Ottoman presence in Borkou, the French authorities first learned of this development in November 1911 from caravans coming from Mao and Ziguei, in Kanem:

> "(A) Aïn Galakka seraient arrivés il y a quelque temps (plus d'un mois) une dizaine de Tirailleurs et d'homme de race blanche porteurs d'un drapeau. Cette petite troupe avait gagné Aïn Galakka par le Nord venat des villages du Tibesti ... Si cette nouvelle est exacte il est probable que les nouveaux venus sont des turcs, qui procedent comme ils ont procédé au Tibesti. Ce fait semblerait appuyer l'opinion, émise dans le rapport politique d'octobre que les turcs se serviraient du Tibesti pour pénétrer au Borkou.[186]"

According to the information received by the French, a Turkish officer had arrived at Aïn Galakka, who "... aurait été appelé par les Marabouts senoussistes de Koufra pour inspecter la garnison de la (zaouiech) senoussiste composé d'arabes tripolitains et porter à Aïn Galakka un drapeau Turc"[187]. Subsequently, the presence there of a Turkish force composed of more than 100 men was reported[188]. Captain Rifky was the Commander of the Ottoman forces. They were stationed at the oasis of Yen, near Aïn Galakka. Abdallah (Tooueur) remained as the Chief of the Senoussi *zawiya* of Aïn Galakka.

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[184] Ciammaichella, op. cit., p. 120, referring to Italian sources: Notiziario Min. Aff. Esteri, Roma, Dir. Centr. Aff. Col. Report 27 May, 8 June and 8 July 1908, Roma 17-8-1908, A.S.M.A.I. 101/ 3F40. However, according to this author, the Senoussi attitude changed after the French conquest of Abéché, which threatened Borkou and Ennedi.

[185] Letter of 30 April 1977, quoted by Lanne, op. cit., p. 40.

[186] "Rapport politique", November 1910, French Archives Annex, p. 438. In the Supplement to this report it is said that on 5 December these arrived in Bilma other caravaneers who "ont confirmé les renseignements déjà donnés sur l'occupation d'aïn Galakka par des tirailleurs venus du Nord et commandés par un blanc. Mais ils ont été plus précis en disant que c'étaient des Turcs".

[187] "Rapport politique", March 1911, French Archives Annex, p. 439.

(iii) Ottoman Presence in Ennedi

4.132 The Ottoman presence in Ennedi was communicated to French authorities in Ouadaï by a letter dated 4 November 1912, signed both by the representative of the Senoussi and the representative of the Ottoman authorities, in the following terms-

> "... nous vous faisons savoir qu'à la date de ce jour nous sommes parvenus au djebel Ennedi en compagnie de gens du djebel, nous et le représentant de la Confrérie des Senoussistes, le Cheïkh Sidi Mohammed el-Bey pour y habiter, mettre un terme aux fauteurs des troubles et empêcher les agressions du moment; les Gaëda et les gens du djebel en entier ont reconnu l'autorité ottomane et se sont placés sous sa domination[189]".

4.133 An Ottoman military post was established at Baki, near Oum Chalouba[190]. The French reaction to these actions, as well as other aspects of Franco-Ottoman relations at the time, will be considered in the following section; but before going further into the details, two main conclusions may be arrived at from the foregoing. *First*, the stationing of Ottoman military forces in Tibesti, Borkou and Ennedi, although a unilateral decision of the Ottomans in the light of French colonial incursions into the *hinterland* of the *vilayet* of Tripoli, was supported by the indigenous populations led by the Senoussi. In *Tibesti*, it was requested by the *Derde* of the Toubou; in *Borkou*, it was supported by the Toubou, the Awlad Sulaiman, the Tuareg and the other Senoussi tribes or confederations who had fled from Kanem. In fact, French sources have stressed the influence of Mohammed Suni of the Senoussi over these peoples in this respect. In *Ennedi*, as the above-quoted letter of November 1912 indicates, the Ottoman move was supported by the local population of the country, who were also under Senoussi leadership. Thus, the French forces advanced into the borderlands regions were opposed by the indigenous population with whom they had to do battle. The Ottoman forces, on the other hand, were welcomed by the inhabitants of the borderlands.

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[188] "Rapport politique", November 1911, indicating that the Turkish Forces were at Yao in September 1911. *French Archives Annex*, p. 443. Other sources give July 1911 as the date of their presence in Aïn Galakka. *See*, Lanne, *op. cit.*, p. 47.

[189] Ciammaichella, *op. cit.*, Annex VII, pp. 159-160. (A copy of these pages is attached as *Exhibit* 33.)

[190] In the Letter of the Kaimakam of the Ottoman Government in Borkou dated December 1912 he states that the Ottoman Government "... nous avait précédemment donné l'ordre d'installer un poste à Oum Chalouba", adding that "Sidi Ahmed Ech-Cherif avait, d'autre part, déclaré que d'après votre consul du Caire, la frontière entre vous et nous était Arada". *See*, Ciammaichella, *op. cit.*, Annexes, X, pp. 163-165.

4.134 The *second* conclusion is that the indigenous peoples and the Senoussi, on the one hand, and the Ottoman military forces, on the other hand, kept apart from each other. There were in fact two military forces in Aïn Galakka during 1911-1912: that of the Senoussi *zawiya* under the command of Abdallah Tooueur, composed of indigenous peoples; and the Turkish forces under the command of Captain Rifky, who occupied the nearby oasis of Yen. This duality was evidenced by the correspondence with the French authorities during this period. Sometimes it was "le Cheïkh de la Zaouïa des Senoussia" who addressed a letter to the French authorities or received their answer. At other times, it was the "le Kaimakam du Borkou"[191]. Both groups had a common aim: the defence of the territory against French colonial expansion. The fact that they remained as distinct groups reflected the fact that in the past they had had separate titles to the territory, for the defence of which they had determined to cooperate and act together against the French.

(b) French-Ottoman Relations in this Period

4.135 Two aspects of French-Ottoman relations will be considered: *first*, the agreement to begin negotiations to delimit the boundary between the territory of the *vilayet* of Tripoli and the French possessions in Africa; *second*, the relations between Ottoman authorities in Tibesti, Borkou and Ennedi and the French during the 1910-1913 period.

4.136 From June 1909 on, according to reports of the British Consul at Tripoli, troubles had arisen along the undelimited frontier between Tunis and the *vilayet* of Tripoli due to the migration of some tribes from the Tripolitainian side. This was affecting trade in the area north of Ghadamès. To prevent French encroachments in the area, the Ottoman Government agreed to open negotiations, which led to the Franco-Ottoman Convention of 19 May 1910[192].

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[191] *See*, the correspondence in Ciammaichella, *op. cit.*, Annexes, pp. 151-182.

4.137 The French occupation of Bilma and incidents between French and Ottoman forces at Ghat, Djanet and the Yat oases demonstrated the uncertain status of areas south of the frontier delimited by the Convention of 1910. On 27 May 1910, France, therefore, proposed a similar delimitation of borders in the Sahara and Sudan; and the Ottoman Government agreed that a Mixed Commission would meet to undertake the work in December 1911. In order to prepare for the negotiations, the authorities of the vilayet of Tripoli recommended to the Ottoman Government the course such a boundary should take[193]. This proposed boundary is set out in paragraph 5.114, below, and illustrated by Map No. 52, appearing there.

4.138 In the meantime, in April 1910, Turkish forces had occupied the Tarat passes between Ghadamès and Ghat and reinforced the post at Bardaï in Tibesti. From there they had proceeded to Borkou, to establish a military post at Yen, near the zawiya of Aïn Galakka, as already described above.

4.139 This last move aroused French public opinion, as shown by articles in Le Temps, during 11-13 August 1911. The paper critized the Ministry of Colonies for the inactivity of French Forces in the area and spoke of "une violation du territoire français au Ouadaï"[194]. (This geographical error in referring to Ouadaï instead of Borkou reveals the general ignorance in France at the time about this territory.) To appease public opinion, the Ministry of Colonies issued a statement, dated 13 August 1911, which was published in Le Temps, in which he said:

> "L'arrivée des Turcs au Tibesti, loin d'amener l'ordre et la tranquillité, a coïncidé avec un redoublement d'hostilité des populations à notre égard. Malgré la précarité de l'occupation

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[192] See, para. 5.111, et seq., below.

[193] Cayci, A.: Buyuk Sahra'da Turk-Fransiz Rekabet (1859-1911), Erzurum, Ataturk University Publication House, 1970, pp. 165-166. (A copy of these pages is attached as Exhibit 38.)

[194] Le Temps, Paris, 11 August 1911. The text of Articles in this newspaper on 11-15 August 1911 are annexed to Internal notes of the Foreign Office Nos. 46, 47, 49 and 50, dated 10, 11, 12 and 14 August 1911. F.O. 146/4190, British Archives Annex, pp. 98-107. In the article of 15 August, "La France et la Turquie en Afrique Centrale", the mistaken reference to Ouadaï in the 11 August article, and repeated on 13 August, was corrected.

> turque cette présence peut transformer la région en foyer d'agitation dangereux en y apportant les germes d'une fermentation islamique.
>
> Pour cet ensemble de motifs, des représentations ont été faites par le Departement des Affaires Etrangères près du Gouvernement ottoman sur la nécessité de respecter le statut provisoire du Tibesti... ."

The note went on to say the following:

> "Une commission doit se réunir à l'automne prochain à Tripoli aux fins de la délimitation de la Tripolitaine et du Sahara français. Il appartiendra à nos délégués de soutenir les droits que nous tenons à la fois de la convention franco-anglaise de 1899 et de la situation spéciale que nous a créée vis-à-vis du Tibesti et du Borkou une contigüité ininterrompue au Sud et à l'Ouest de ces îlots sahariens.
>
> C'est donc à l'action diplomatique seule qu'il convient à l'heure présente de laisser le soin de sauvegarder l'intégrité de notre sphère d'influence dans le Sahara oriental telle qu'elle résulte de l'acte du 21 mars 1899.
>
> Le gouvernement impérial à d'ailleurs été prévenu que dans les conférences qui se tiendront à Tripoli de Barbarie en vue de la délimitation de la Tripolitaine, les commissaires français se réfuseront à considerer les mesures prises par les autorités turques pour étendre la domination ottomane sur le Tibesti et le Borkou comme constituant des titres en faveur de la Turquie.[195]"

4.140 The French proposal of 27 May 1910 to meet to delimit the remaining part of the frontier, which was accepted by the Ottoman Government, and the release of 15 August 1911 issued by the Ministry of Colonies, demonstrate that no agreed boundary of Tripolitania existed at that time to the south and east of Ghadamès. In the 15 August release, the Minister placed reliance only on the "sphère d'influence" established by the Anglo-French Declaration of 21 March 1899, an agreement not opposable to the Ottoman Empire, and which the Porte had vigorously protested, in any event. It is also noted that the French release of 15 August 1911 added, as a suggested basis of French claims in Borkou and Tibesti, the claimed need for "une contiguité ininterrompue au Sud et à l'Ouest de ces îlots sahariens". But contiguity, as a possible basis of title to territory, was also reflected in the Ottoman claim over the "hinterland" of Tripolitania; and it would

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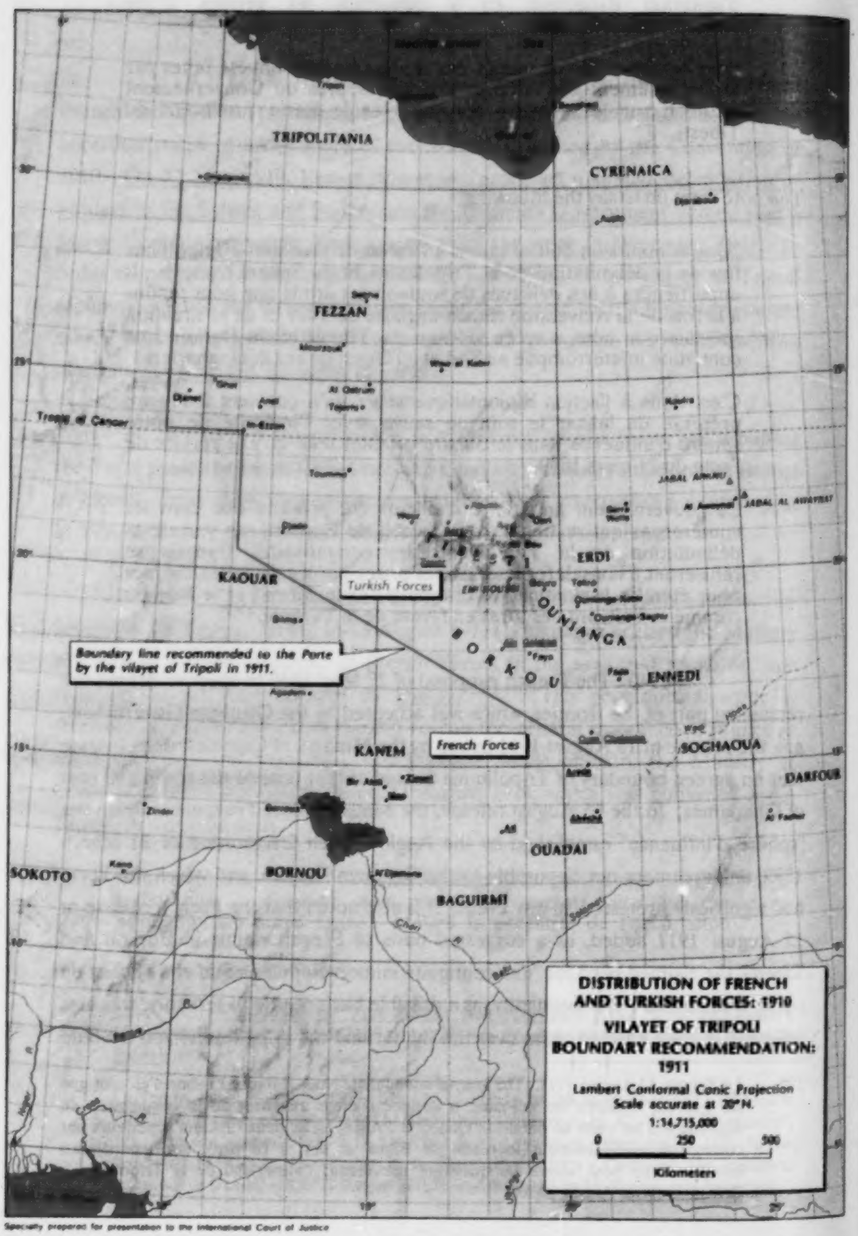
[195] Le Temps, 13 August 1911. The journal added that "Nous sommes à même d'ajouter que M. Lebrun, ministre des colonies, a désigné comme membres de la commission de délimitation les chefs de bataillon Gaden et Prevost. Ces deux officiers supérieurs ont commandé successivement le cercle de Bilma et ont, à ce titre, une compétence exceptionnelle pour toutes les questions concernant l'hinterland de la Tripolitaine". British Archives Annex, p. 106.

Map.N°35



DISTRIBUTION OF FRENCH AND TURKISH FORCES: 1910

VILAYET OF TRIPOLI BOUNDARY RECOMMENDATION: 1911

Lambert Conformal Conic Projection
Scale accurate at 20° N.
1:14,715,000
0 250 500
Kilometers

Specially prepared for presentation to the International Court of Justice

have been difficult to deny the contiguity that existed between Tripolitania, Cyrenaica, Fezzan and Tibesti, Borkou and Ennedi and the other borderlands, joined by the north/south caravan route, a contiguity that had existed over several centuries and had found expression, not just on a map, but in active trade and commerce, in the interchange between nomad tribes, in the common sharing of the Muslim religion and the heritage of Arab culture and, finally, in the coordination and authority provided by the Senoussi, which had as its focus in 1911 the French military moves that menaced these regions.

4.141 It is not possible to conceive that in the boundary negotiations, which in 1911 the Ottoman Empire and France had planned to undertake, the Ottoman Government would have accepted, without major territorial concessions on the French side, "l'intégrité" of the sphere of influence agreed between France and Great Britain in 1899. On the contrary, the Ottoman position taken in advance of the planned negotiations showed that the Ottomans had taken into account both the limited extent of the French military presence in Kanem and Ouadaï and the effective Ottoman military presence in Tibesti and Borkou, shortly to be extended south to Oum Chalouba in Ennedi. Map No. 35 indicates the locations of the Ottoman and French forces, respectively. It also portrays the modified Ottoman claim recommended by the vilayet of Tripoli in 1911. In reducing the extent of the Ottoman claims of 1890 and 1899, the recommendation of the vilayet of Tripoli took account of the areas of effective occupation of both France and the Ottoman Empire at the time[196].

4.142 It is correct to conclude from the conduct of the Ottoman authorities in Tibesti, Borkou and Ennedi and of the French authorities in Kanem and Ouadaï that a de facto line of separation based on the effective presence of each of them at the time had been given tacit recognition between 1910 and 1913.

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[196] Such a basis for reaching an understanding was rejected by the article in Le Temps of 15 August 1911, in which it was argued that any concession that contemplated a future Turkish presence in Borkou offered a double danger: "Elle nous prive d'abord d'une sorte de boulevard septentrional destiné à couvrir un jour notre centre africain contre les agissements d'autres puissances... . Elle porte d'autre part un coup fatal à notre prestige ... ." The article went on to say "... la France est désormais en mesure d'obtenir dès l'hiver prochain une délimitation Tchad-Tripolitaine aussi satisfaisante que le fut celle de la frontière tunisienne". But the article added that after the future delimitation further action would be required by France: "Tant que les territoires contestés ne seront pas occupés effectivement par nos troupes, les délimitations diplomatiques n'auront que la valeur d'un document de chancellerie et notre territoire du Tchad restera à la merci de surprises désagréables." British Archives Annex, p. 107.

This modus vivendi only came to an end as a consequence of the Ottoman defeat in the war with Italy, and the Treaty of Ouchy (October 1912).

4.143 The evidence to support such a de facto boundary will now be examined[197]. When, in 1911, Captain Rifky, the Commander of Ottoman forces, arrived in Borkou, he addressed a letter to Colonel Largeau, the French Commander at Fort Lamy, stating that having come at the request of the Senoussi, who feared the destruction of their zawiyas in Borkou, he would welcome a good relationship with the French, supporting their efforts to maintain the peace in the country. In his first reponse, the French Commander refused to accept the Ottoman presence in a territory embraced by the 1899 Anglo-French Declaration. Captain Rifky replied that the Ottomans had for a long time held rights over countries north of Lake Chad and had never accepted such agreements among third States to which they were not a party. After the outbreak of the war in September 1911 between Italy and the Ottoman Empire, however, Colonel Largeau's attitude changed. He decided to write to the Ottoman Commander that:

> "Nous ne reconnaissons pas l'occupation ottomane au Borkou mais liés avec La Porte par une amitié séculaire nous n'entendons pas profiter de ses difficultés actuelles pour abattre son pavillon à Galakka. Nous respecterons donc la situation acquise jusqu'à nouvel ordre et sans doute jusqu'à la fin de la guerre.[198]"

In this way, Colonel Largeau hoped that "... nous aurons ainsi un modus vivendi acceptable tout en réservant l'avenir dans le sens que prescrit le D.M. (decree) du 17 octobre 1911". Perhaps the most important communication at the time was a letter from Colonel Largeau dated 12 January 1912 to the Ottoman Commander at Aïn Galakka in which he took the position that the Ottoman had assumed responsibility for the indigenous peoples of Brokou, having raised the Turkish flag there[199].

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[197] See, Lanne, op. cit., pp. 49-51; Histoire Militaire de l'Afrique Equatoriale Française, op. cit., pp. 422-423; Bulletin du Comité de l'Afrique Française, 1928, pp. 417-419; Rossi, op. cit., pp. 347-348.

[198] Colonel Largeau's telegram to Brazzaville n. 128, quoted by Ciammaichella, op. cit., Annex, I, p. 151. (Emphasis added.) (A copy of this page is attached as Exhibit 33.)

[199] See, Salvati, C.: Italia e Francia nel Sahara orientale, Milano, Libreria d'Italia, 1929, pp. 84-87, Exhibit 34.

4.144 The official French military history of this period is particularly interesting in that it confirms the existence of a *modus vivendi* between the French and the Ottomans starting in 1911. In this document appears the following résumé:

> "Au début de 1911, un élément nouveau était intervenu. La Turquie n'avait jamais ratifié les accords franco-anglais relatifs à ces régions, et les autorités du Fezzan y avaient occupé Bardaï et Zouar au Tibesti. Peu après, un officier turc venait à Aïn-Galakka. L'autorité de la France en souffrit et les pillards, sûrs de l'impunité multiplièrent leurs agressions en pays soumis.
>
> Un *arrangement passager* est bien conclu avec l'officier turc d'Aïn-Galakka. Mais les répercussions de la guerre italo-turque se font bientôt sentir. Le représentant turc quitte le Borkou en mai 1912, tandis que les Senoussistes et leur chef Abdallah Tooueur reprennent plus que jamais leur indépendence.[200]"

4.145 This official French military history elaborates on the "arrangement passager". In 1911, certain of the populations of Borkou had appealed to the French to help protect their rights to harvest the date crops which a group of refugees from Ennedi had started to harvest themselves. These refugees had fled Ennedi in the light of incursions from Ouadaï that stemmed from the French war going on there. The French military refused assistance for these reasons:

> "Mais des ordres stricts étaient donnés pour l'observation du *statu quo* au Borkou. D'autre part, la situation de la France dans les pays du Tchad n'était pas suffisamment affermie et ses forces étaient encore trop faibles pour étendre l'occupation. Toutefois, les événements dans le Tibesti et le Borkou étaient suivis avec intérêt.
>
> Dans les premiers jours de 1911, était parvenue la nouvelle de l'installation à Bardaï et à Zouar d'une garnison turque. La Turquie n'avait pas adhéré à la convention franco-anglaise de 1898; tout en affirmant ses droits sur le Tibesti, elle n'avait jamais occupé le pays jusque là.
>
> Peu après l'occupation de Bardaï, un officier turc vint à Aïn-Galakka où le pavillon ottoman fut hissé.
>
> Désormais la France ne pouvait plus intervenir contre les pillards du Borkou sans risquer des difficultés avec la Turquie. Le ministre de France à Constantinople obtint la promesse de la réunion d'une conférence qui réglerait définitivement la question de la frontière de Tripolitaine. En

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[200] *Histoire Militaire de l'Afrique Equatoriale Française*, *op. cit.*, p. 243. (Emphasis added.) *Exhibit* 26.

> attendant les résultats de cette conférence les autorités locales françaises ne pouvaient que se protéger contre les pillards devenus d'autant plus agressifs qu'ils avaient désormais un refuge où les Turcs n'avaient pas le moyen d'agir contre eux et où la France ne pouvait exercer aucun droit de poursuite[201]."

What this extract shows is that orders from Paris had been issued not to rock the boat with the Ottomans. The French Government planned to deal with "la question de la frontière de Tripolitaine" at a forthcoming conference. This was the conference that was planned to delimit this part of the boundary but that never took place due to the Ottoman defeat by Italy in 1912 and the resulting Treaty of Ouchy.

4.146 The tenor of the instructions issued from Paris appears in a statement of the Minister of Colonies to the Chambre des Deputés on 5 April 1911:

> "Pour ce qui est du Tibesti et du Borkou qui s'étendent au nord du Ouadaï, dans la région qui sépare le Ouadaï de la Tripolitaine et dans laquelle, comme le disait tout à l'heure M. Georges Leygues, les Turcs pratiquent en ce moment une politique d'action, j'ai été l'objet de suggestions tendant à nous faire occuper le Tibesti et le Borkou. Je m'y suis refusé et j'ai donné des instructions dans ce sens aux gouverneurs généraux de l'Afrique occidentale française et de l'Afrique équatoriale française.
>
> Nos droits sur ces pays me paraissent évidents; ils ressortent des traités de la façon la plus claire et je considère que s'il doit intervenir une discussion diplomatique, nos plénipotentiaires auront entre les mains tous les moyens de faire valoir nos droits[202]."

In other words, the French Government intended to rely on the resolution of the boundary question by direct negotiation with the Ottoman government, and French troops were forbidden in the meantime to encroach on these areas occupied by the Ottoman forces. Aside from recognising Ottoman occupation of the area, the French Government had also recognised the existence of a boundary question to be resolved and, in the meantime, that an "arrangement passager" had been entered into.

4.147 The situation that had come about had certain advantages for the French, for at the time they were engaged in the difficult war against the Sultan of Ouadaï. The French view at the time has been explained this way:

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[201] Ibid., p. 391. Exhibit 26.

[202] Ibid., fn. 1. Exhibit 26.

> "Dès le mois de mai 1912, les résultats heureux de cette entente se firent sentir, tout au moins dans les rapports entre le Borkou et le Kanem. Les indigènes purent circuler sous la seule sauvegarde des laisser-passer délivrés par l'autorité française ou par celle d'Aïn Galakka ... Il n'en fut de même du côté de l'Ennedi. Ne disposant pas de forces lui permettant d'atteindre les rebelles, le Capitaine Rifky ne put empêcher les déprédations des pillards[203]."

4.148 The French campaign against Ouadaï had serious repercussions for Ennedi. The populations of Ouadaï, suffering a serious famine starting in 1911, frequently ravaged Ennedi to the north. As a result, in July-September 1912, a French column, pursuing the raiders, penetrated as far north as the oasis of Faya: "... où les autorités françaises s'étaient momentanément engagées à ne pas pénétrer". The French Commander of the forces met there the Turkish Lieutenant who had come over from Aïn Galakka[204]. This led to the Ottoman move to establish an effective presence in Ennedi, where they set up a military post at Baki, near Oum Chalouba, as already mentioned. On 4 November 1912, the French Commander at Abéché sent a letter to the Turkish Kaimakam of Borkou protesting the Ottoman occupation of Ennedi and stating that this country "nous appartient par droit de conquête et par les traités". But the communication also contained the following statement:

> "Ces réserves faites, je ne puis que vous remercier de la protection que vous apportez à la caravane de sel et de vos efforts pour faire régner la sécurité. De notre côté nous en ferons autant entre Arada et Oueyta.[205]"

4.149 The response of the Kaimakam of Borkou of 13 December 1913 is an interesting document. In it, he expressed the will to cooperate with the French forces, indicating that Turkish soldiers had been protecting the salt caravans. But he also complained about the reservations on territorial rights made by the Commander of Abéché in his letter:

> "Vous exposez en termes durs et pas convenables pour nous, nous sommes mis dans notre tort, que nous avons fait notre entrée sur votre Territoire et que nous avons outrepassé les limites;

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[203] Ibid., p. 422. Exhibit 26.

[204] Ibid., p. 423. Exhibit 26.

[205] Dispatch from the Commander at Abéché to the Kaimakam at Aïn Galakka, 4 November 1912, B.I.F. MS 6004 (2), quoted by Ciammaichella, op. cit., Annex, VIII, pp. 160-161. (Emphasis added.) (Copies of these pages are attached as Exhibit 33.)

> cependant celles-ci n'ont pas été fixées entre vous et nous et vous dites même: 'Le colonel est parti en France pour établir ces limites'. Pourquoi donc revendiquez-vous la propriété (du Territoire) avant la délimitation de nos possessions réciproques, délimitation qui sera faite d'un commun accord entre nos deux gouvernements? Dès qu'elle sera établie, quiconque outrepassera ses droits aura alors donné matière au trouble[206]."

4.150 These events point to three conclusions. First, from their military posts at Bardaï and at Bir Cherda (near Zouar) in Tibesti, at Aïn Galakka in Borkou, and at Baki in Ennedi, the Ottomans exercised effective authority over those regions during the period here considered, 1910-1913. This fact was recognised by the French authorities there at the time. Second, until the definitive withdrawal of all Turkish forces in 1913, a situation was created - be it a modus vivendi or an "arrangement passager", as the French sources refer to it - in which the French forces remained at Ziguei in Kanem and at Arada in Ouadaï, making only occasional penetrations into areas where the French Government had instructed them not to enter. There was thus established a de facto line separating Kanem and Ouadaï, on the French side, from Borkou, Ennedi and Tibesti, on the Ottoman side. This was regarded by both sides as an interim arrangement - "un arrangement passager" - pending the outcome of negotiations to delimit the boundary between Tripolitania and the French territories that were contemplated to take place shortly. Third, Ottoman authorities in Borkou and Ennedi rejected French claims to territories north of this de facto line, stressing not only previous Ottoman rights but also the absence of any delimitation as to the boundary between their respective territories.

(c) French-Senoussi Relations in this Period

4.151 From their first contacts with the Senoussi, the French had regarded them as the main obstacle to colonial expansion in areas north and east of Lake Chad. This conviction was strengthened by Lieut. Colonel Destenave's report of 1902, his interpretation of the Senoussi correspondence seized at Bir

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[206] The Kaimakam of Borkou to the Chief of the Bataillon of Ouadaï. 13 December 1912. B.I.F. MS 6004 (2), included in Ciammaichella, op. cit., Annex, IX, pp. 162-163. (A copy of these pages is attached as Exhibit 33.)

Alali[207] and the distorted picture of the Senoussi that had been passed on to Paris. By 1903, Colonel Largeau had reached the same conclusion - that the Senoussi were the principal obstacle in France's way.

4.152 What the documentary evidence shows is the following. Although fearing the impact of French colonial expansion in the area, which had begun to disrupt the caravan routes and the social organization of indigenous peoples and that had started to block the extension of the Order into the Sudanic countries, the Senoussi's initial purpose was to organize the indigenous peoples from their *zawiya* at Bir Alali, where a wary eye could be kept on the French advance. After the French destruction of the *zawiya* in 1902, the Senoussi tried to recover it, but without success. Thereafter, during 1903-1913, they adopted a defensive policy from the *zawiyas* of Borkou and Ennedi; and they gave support to the Sultanate of Ouadaï in its fight against the French. The Senoussi organized the armed resistance of the indigenous tribes of the region against French encroachments northward on their lands. In this effort, the Senoussi were reinforced by the Ottoman presence in Tibesti, Borkou and Ennedi; and the Senoussi accepted the *de facto* boundary limiting the French to a line between Ziguei in Kanem and Arada in Ouadaï (*Map No. 35*).

4.153 It was in this setting that another important event occurred. In 1911, proposals were made to the Senoussi by a representative of the French Government, M. A. Bonnel de Mezières, who had been sent on an official mission to Cairo. The content of these negotiations, and their effects on the local situation in Borkou and Ennedi, will be considered next.

4.154 On 19 June 1911, the Ministry of Colonies gave certain instructions to M. Bonnel de Mezières, with a view to achieving two main objectives: (i) to obtain "la soumission de l'ex-Sultan Doud Mourah"; and to this end certain offers were made to the ex-Sultan by M. Bonnel de Mezières on 6 July

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[207] *See*, Triaud, *op.cit.*, pp. 30-31, where he states that "... Desenave voulut parachever sa réussite en justifiant l'oeuvre entreprise. Sans doute avait-il conscience que des critiques seraient formulées contre son action (...). Il s'attacha donc à rassembler toutes les pièces justificatives en vue d'un plaidoyer argumenté - sorte de rapport final - qui démontrerait la volonté aggressive de la Sanussiya et la nécessité de la désarmer avant qu'il ne soit trop tard." (Copies of these pages are attached as *Exhibit* 17.)

1911[208]; (ii) to "amener le Cheik des Senoussya à désavouer toute hostilité de ses khouans" against their forces. These instructions to the French emissary concerning the Senoussi charged him -

> "... à exposer les intentions conciliantes que nous sommes disposés à entretenir à leur égard, dans nos nouveaux établissements de l'Afrique Centrale. Nous pourrons au moment opportun, rechercher la formule d'un modus vivendi susceptible de permettre aux agents de cette confrérie d'exercer certaines des coutumes qui, par le passé marquaient l'influence de leurs zaouia sur les indigènes du Ouadai affiliés à la tariga Senoussya ... mais nous ne saurions tolérer la continuité du traffic des esclaves et de la contrebande des armes ...[209]."

4.155 As a counterpart, the Head of the Senoussi, Ahmed el-Cherif, was to be requested to enter-

> "... dans la voie de la conciliation et de l'apaisement, en prescribant à sa clientèle de Borkou et du Oudaï l'adoption vis-à-vis de nous d'une attitude basée sur la reconnaissance du fait accompli."

It was to be suggested that the Senoussi invite their followers-

> "... à ne plus considérer le Ouadai comme 'dar el harb' mais comme un pays où l'autorité étrangère assurant le respect de la foi musulmane doit cesser d'être combattue."

The situation existing in Ouadaï was the principal object of this French approach to the Senoussi.

4.156 M. Bonnel de Mezières, presenting himself as "a noted official of the French Government and in my capacity as Deputy to my Government", carried out these instructions by a letter addressed to "Said Ahmed El Cherif El Senoussi" dated 6 July 1911. After expressing the aims of the French presence in Ouadaï, said to include the desire "to assist the populations in all religious matters" and "to open the road for trade" between this country and the Mediterranean, the letter went on to state, in respect to trade, that:

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[208] Letter from Monsieur Bonnel de Mezières to ex-Sultan Mohamed Saleh of 6 July 1911, annexed to the letter of Lord Kitchener to Sir E. Grey of 12 May 1912, F.O. 371/1363. (Emphasis added.) British Archives Annex, pp. 110-112

[209] Instructions concernant la Mission Bonnel de Mezières, 19 June 1911. (Emphasis added.) See, French Archives Annex, p. 282.

> "The French Gouvernment, in order to arrive at this object, has established a military Post at a place called Arada, and our Government has no intention whatever of going beyond this Post, or beyond its own frontier which as you know is very far off from Kufra.
>
> You can quite see in this letter that the main object of France is to arrive at a mutual understanding and agreement with our brethren who are living within our territory, or who are our neighbours. If it is possible for us to succeed in this we are willing to extend to you our friendly hand and stroll together in the way of improvement and prosperity ... . The French Government is also prepared to help the Senussist and Ulemas in everything they want. Should you have any suggestions or any particular ideas to give on this subject, or with regard to the system that we shall adopt to bring peace and tranquility into the country North of Wadai, the French Government would be delighted to hear them and promises to follow any advice or idea that will give prosperity and happiness to the natives.[210]"

4.157 In exchange, M. Bonnel de Mezières asked the Head of the Senoussi to order his followers not to consider "Dar Wadai to be a country of Jehad", to make them understand that France respects "the Mahommedan Law and the habits of the natives" and "to stop hostilities and aggressions against our Government". In so requesting the Senoussi, M. Bonnel de Mezières was following the instructions given to him by the Ministry of Colonies. There is no room to doubt, therefore, that the offer made in this letter and the statement concerning the territorial situation in the area were other than in accordance with the official instructions given by the French Government[211]. This French official certainly had apparent authority. Moreover, his communication was entirely in line with the "arrangement passager" already reached with the Ottomans.

4.158 At the time of receiving this letter of 6 July 1911, the Head of the Senoussi well knew of the difficulties that the French had encountered in Ouadaï. And he surely knew of the Turkish presence in Borkou and of the Ottoman plans to extend their presence to Ennedi, with a new military post at

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[210] Letter from Bonnel de Mezières to Said Ahmed El Sherif El Senussi, annexed to the letter of Lord Kitchener to Sir E. Grey of 12 May 1912, F.O. 371/1363. (Emphasis added). British Archives Annex, pp. 114-115

[211] Ciammaichella, op.cit., p. 121, says that Bonnel de Mezières acted "sans aucun mandat officiel". However, he does not refer to the instructions of 19 June 1911, and it seems that he knew of the content of the letter addressed to Ahmed el-Cherif only indirectly.

Oum Chalouba[212], some 50 kilometers directly north of Arada. Therefore, the situation seemed to favour the Senoussi, and the Senoussi answer sent to Bonnel de Mezières on 11 November 1911 reflected this feeling. After recalling the French attacks against the Order and the purely defensive position of the Senoussi, the letter declared:

> "We hereby state our conditions of peace:
>
> 1. Your troops should withdraw from Allali to El Kisra. You have come up before us to El Kisra and we have done the same at Allali and it would not help to peace, indeed it would be very dangerous for your troops and our brethen to meet in one place, as blood has been shed between them.
>
> 2. The frontier between us is to be El Kisra from the Kanem side and Arada from the Wadai side as you have stated, and we give you our word that we will advise Sultan Saleh and will send him your letter[213]."

4.159 There are several aspects of these conditions to note. The Head of the Senoussi made only a brief reference to the Ottomans. In another part of the letter he also indicated that the Senoussi tariqa "has been honoured by the Ottoman". For he was dealing with France on frontier questions on behalf of the Senoussi Order and the indigenous tribes, as an autonomous power in the area. A second aspect is that the Senoussi considered the foundation for peace with the French to be a territorial arrangement, based on a concrete "frontier". But their proposals in respect to Kanem went well to the south of the line indicated by Bonnel de Mezières. They contemplated a return to the situation existing before the French occupation of Bir Alali on 20 January 1902. On the Ouadaï side, on the other hand, the Senoussi accepted Arada. The situation for the Senoussi was that even if the French rejected the proposed abandonment of Kanem by French forces, Borkou would remain in the possession of the Senoussi, who were in fact already well established there. As to Ennedi, it had been forfeited by France since the French proposal was to limit their northward penetration at Arada, which lay to the south of Ennedi, on the line of 15°N latitude.

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[212] As indicated above, the Kaimakam of Borkou in his letter of December 1912 refers to instructions of the Ottoman Government to "installer un poste à Oum Chalouba". See, Ciammaichella, op.cit., Annexes, X, p. 164.

[213] Ahmed el-Sherif to Bonnel de Mezières, 1st November 1911, enclosed with the letter of Lord Kitchener to Sir E. Grey of 12 May 1912, F.O. 371/1363. Ahmed el-Sherif also requested the return to the Senoussi of 700 books and 3,000 rifles seized by the French in the zawiyas. British Archives Annex, p. 122.

4.160 In Lord Kitchener's letter to Sir Edward Grey of 12 May 1912, to which this exchange of letters was attached, it was stated that "the reply of the Senussi to M. de Mezières has not yet reached that gentleman, who is supposed to be now on his way out to Egypt". However, in Ahmed el-Sherif's letter of 1 November 1911, it was indicated that, while awaiting the French reply, he had written "to our brethren to put a stop to raiding and ordered El Sheikh Abdl El Fedil to address your Agent at El Kisra to the same effect". So the Senoussi had already started to implement the anticipated agreement, treating it as an official approach of the French Government; and the interest the British were taking in the exchange suggested the same thing.

4.161 Turning now to the action taken by Sheikh Ben el-Fadhil at El Kisra, it is known that he wrote to Colonel Largeau on 11 April 1912, saying that a letter had been received -

> "... du représentant de la France en résidence au Caire, datée du 10 redjeb 1329(8 juin 1911) par laquelle il demande un arrangement avec lui et une fixation des limites. Il lui fut repondu. Nous lui avons écrit que nous vous faisons part de cela et qu'il n'y aura pas de troupes armées en course de razzia jusqu'à l'arrivée de la réponse du dit représentant[214]."

On 6 June 1912, Colonel Largeau reported receiving a second letter from the Sheikh of the zawiya at Aïn Galakka, in which it was stated that:

> "Vous n'ignorez pas que les pays d'Oueyta sont du domaine du gouvernement ottoman d'après l'accord qui a eu lieu entre notre Seigneur Sidi Ahmed ech-Cherif et votre représentant au Caire. De plus jusqu'à la limite d'Arada il ne pourra être porté aucune atteinte de votre part à ce qui se trouvera sur notre domaine[215]."

4.162 The correspondence beween the Senoussi and the French authorities continued until at least 1914, always having as its subject the territorial arrangements proposed by France in 1911 and, in particular, the northern limits at Arada[216]. However, a report of 19 April 1912 by the French Commander of the military territory of Chad, Colonel Largeau, indicated that he had proposed to abandon the French proposals in the light of the fact that-

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[214] Ciammaichella, op.cit., Annex, II, pp. 152-153. It is to be noted that the date of the letter from Bonnel de Mezières to Ahmed el-Cherif referred to by Abdallah Ben el-Fadhil (8 June 1911) does not coincide with the English translation in Cairo which bore a date of 6 July 1911. (A copy of these pages is attached as Exhibit 33.)

[215] Included in telegram of Colonel Largeau No. 133 of 6 June 1912. See, Ciammaichella, op. cit., Annex, III, pp. 153-154. (A copy of these pages is attached as Exhibit 33.) On the same subject, see, also, the letter sent to the French Commander at Ouadai by the Chief Kaussen. Ibid., Annexes IV, p. 155.

> "... les propositions du Caire donnaient aux senoussistes jusqu'à Oum Chalouba inclusivement ce qui impliquait la renonciation aux bénéfices de la Convention de 1899 et nous rendait la situation totalement intenable tant au point de vue de la sécurité qu'au point de vue moral et à celui de la conservation des chameaux[217]."

The French Agent in Cairo also indicated, in a dispatch dated 1 May 1913, that in answering the letter from Ahmed el-Cherif to Bonnel de Mezières-

> "...je me suis exprimé avec la précision que peut autoriser la langue arabe pour repousser la prétention de considérer Arada comme la limite de notre action vers le nord[218]."

Colonel Largeau had clearly referred to the "propositions du Caire"; now, in this dispatch from Cairo, the northern limits at Arada had been transformed to a Senoussi "prétension". A few months later, the French Representative at Cairo even wrote to Mohammed Idris Ben el-Mahdi that-

> "...la personne qui avait écrit avant nous à Ahmed Cherif n'avait ni le pouvoir ni le droit de dire que le point d'Arada marque la limite de la frontière entre les possessions françaises et vous parce que cette frontière a été délimitée depuis de nombreuses années par un accord connu de tout le monde intervenu entre les grands

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[216] See, the texts in Ciammaichella, op. cit., Annex, XV and XX, pp. 170-171, 179-180.

[217] Colonel Largeau, Telegram No. 129 of 30 May 1912, referring to the previous report on the matter of 19 April. He added that "Je crois devoir insister sur ce point très important". For a copy of the telegram, see, Ciammaichella, op. cit., pp. 152-153. In an internal note of the French Ministry of Colonies of 11 July 1912, commenting on Largeau's telegrams No. 126 and 133, there appears the statement that the instructions given to Bonnel de Mezières were drafted to exclude the "question de reconnaitre aux Senoussi des droits territoriaux quelconques", characterizing the reference to Arada in the letter of the French representative as "une grave imprudence". The Minister added that "Le Departement a repondu à la date du 1er Avril 1912 ... que nous ne pouvions admettre aucun débat sur ce point, mais que dans la limite des suggestions formulées par nous, les pourparler avec le Cheikh de Koufra pourraient continuer. Il parait impossible d'aller au delà...". (Emphasis added.) French Archives Annex, p. 157-158.

[218] Defrance-Pichon, Letter, 1 May 1913. See, Ciammaichella, op. cit., Annex, XVI, pp. 171-172. (A copy of these pages is attached as Exhibit 33.)

> gouvernements et dont vous avez sans aucun doute eu connaissance[219]."

4.163 But this matter is not so easily explained away - by accusing the French emissary of exceeding his instructions. For the change in the French attitude between July 1911 and April 1912 - and particularly June 1913 - is explained by the facts that intervened, and which led to making Bonnel de Mezières the scapegoat in order to rationalise the new course adopted by the French authorities. Between the first two dates, Sultan Saleh of Ouadaï had surrendered to the French, on October 1911; the Italo-Turkish war had begun, on 29 September 1911, with the Italian forces landing at Tripoli; finally, on 21 March 1912, most of the Ottoman forces at Aïn Galakka had been withdrawn north to Yoo in Tibesti, leaving behind a reduced garrison[220].

4.164 Thus, the situation had suddenly shifted in France's favour. A new factor had entered the equation as well: the fact that any agreement over the borders of Tripolitania and Cyrenaica would have to be with Italy, not with the Ottoman Empire. These circumstances were taken into account in 1914, when suggestions were made within the French Government to agree to yield Gouro in Ounianga, just east of Tibesti, to the Senoussi. This was the furthest north that French forces had penetrated up to that time. It had also been the Senoussi base of operations starting in 1899, from which the indigenous tribes were organized and led by the Senoussi in the defense of their lands against the French military advances into the region.

4.165 The French proposal to yield Gouro has been described by sources in the French archives in the following way-

> "... à la fin de 1914, alors que la situation du territoire du Tchad dominée par la ruine du Ouaddai et la disparition de son cheptel était critique, que des effectifs étaient nécessaires pour constituer les colonnes d'opérations contre le Cameroun, qu'une importance exagérée aussi était donnée à la puissance des Senoussistes, à leur force réelle et à leur influence véritable, le Général Largeau avait envisagé la possibilité de la remise volontaire de Gouro aux Senoussistes traitant avec eux comme avec une puissance organisée.

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[219] Letter of M. Defrance to Mohammed Idriss Ben el-Mahdi, 24 June 1913. See, Ciammaichella, op. cit., Annexes, XVII, pp. 172-174. Exhibit 33. See, also, the tough terms set out in the letter from Colonel Largeau dated 31 December 1913, ibid., Annex, XIX, pp. 177-178.

[220] "Rapport Politique" March 1912. French Archives Annex, p. 445.

> Le Département s'y opposa arguant qu'au moment où les Italiens - qui allaient devenir bon Alliés - étaient au prises en Tripolitaine avec les Senoussites, le moment ne paraissait point venu pour favoriser ces derniers[221]."

It is of interest that Colonel Largeau, who knew as much about the realities of the situation as anyone, was said to have considered dealing with the Senoussi "comme avec une puissance organisée".

SECTION 6. The War Between Italy and the Ottoman Empire and Its Consequences for the Situation in the Region

(a) The Italo-Ottoman War of 1911-1912

4.166 The War itself, and the Treaty of Ouchy, are dealt with in Part V, starting at paragraph 5.128. However, three aspects of the events surrounding this war are of relevance to the present discussion. First, two months after landing in the *vilayet* of Tripoli, the Italian forces only controlled a part of the coast, having encountered strong resistance not only from Ottoman forces but also from the indigenous tribes, including the Cyrenaican tribes led by the Senoussi. Thus, it was the Senoussi once more who were in the forefront of the struggle against this attempt to appropriate the lands of indigenous peoples in the north by another colonial power, Italy.

4.167 Second, in the group of secret and public documents that comprised the Treaty of Ouchy entered into on 15 October 1912, the Sultan granted to the inhabitants of Tripolitania and Cyrenaica full autonomy; and he was given the right to appoint a representative to protect Ottoman rights and titles there and to name a *cadi* (judge). As will be seen, this was the first of a series of actions and agreements giving special recognition to the peoples of Libya, culminating in the accession in December 1950, following Libya's independence, of the Head of the Senoussi to the throne of Libya as its King. For the indigenous peoples, who had been the victims of outrages and massacres by the Italian forces from the first moments of the war, the autonomy granted by the Porte was an important rallying point in the struggle against Italian occupation of the country over many years, a struggle led by the Senoussi.

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[221] General Colonna de Giovellina, "Note sur les événements qui se sont déroulés sur les confins nord, nord-est et est du territoire du Tchad pendant la période du 2 août 1914 au 15 juin 1916", 29 June 1916, French Archives Annex, p. 445-456. (Emphasis added.) In a dispatch of the Administrateur du Territoire du Tchad, Merlet, dated 1 July 1916, two other reasons are given against Largeau's proposal concerning Gouro: "évacuation Gouro serait interprétée par indigènes comme signe faiblesse. D'autre part, abandon partiel Borkou et Tibesti pourrait provoquer revendication sans contre-partie Italiens se substituant après guerre à Senoussistes", French Archives Annex, p. 458.

4.168 Third, in the Treaty of Ouchy, Italy succeeded to the sovereign rights and legal titles of the Ottoman Empire concerning both the territory and the peoples of Libya. Whatever ambiguities may have existed in the Treaty of Ouchy, and whatever assertions may subsequently have been made by Turkey, both France and Great Britain repeatedly and without reservation acknowledged that Italy had acquired full and entire sovereignty over Libya, which necessarily meant to its territory and to its peoples at that time. Thus, the situation in the Libya-Chad borderlands as it existed in 1912 is directly relevant. As has been seen, at the time that Italy succeeded to the rights and titles of the Ottoman Empire in the Treaty of Ouchy, French forces were posted south of a de facto line running from Ziguei in Kanem to Arada in Ouadaï, that is south of 15° N latitude; and the entire regions of Borkou, Tibesti, Ennedi, Ounianga and Erdi were under the control and occupation of the Ottoman forces and the Senoussi tribes (Map No. 34 referred to in paragraph 4.120.)

4.169 The French attitude with respect to the situation as it existed in the regions north of Lake Chad is reflected in a note prepared by the French Ministry of Colonies for the "Commission Interministerelle des Affaires Musulmanes" at a date believed to be at the end of 1911, which stated that:

> "Le Borkou et le Tibesti forment deux îlots sahariens où jusqu'à ce jour l'influence des Senoussya s'est manifesté sans partage. L'aridité de cette region nous a empêche d'y faire acte d'occupation et les Turcs, mettant à profit notre inaction apparente, ont tenté d'y acquerir une situation de fait susceptible d'annihiler les droits que nous tenons de la convention franco-anglaise du 14 juin 1898 (acte additionnel du 21 mars 1899). Une conférence devait s'ouvrir avec le Gouvernement ottoman à l'heure où a éclaté le conflit italo-turc, en vue de la détermination précise des zones d'influence respectives des deux pays. L'annexion de la Tripolitaine par le Gouvernment de Rome rend désormais sans objet ce projet de délimitation[222]."

The reference in the note to the delimitation conference that had been scheduled to take place between France and the Ottoman Empire is a clear indication by the French Ministry of Colonies that no boundary existed in this region encompassing Tibesti and Borkou. The note went on to recommend that France occupy these regions since the continuity of "ces deux forteresses sahariennes du Senoussisme présenterait les plus gros inconvénients". The two Senoussi fortresses referred to were Borkou and Tibesti.

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[222] Note of French Ministère de Colonies, undated (believed to be 1911). French Archives Annex, p. 154.

4.170 The note indicated that the steps necessary for the occupation of Borkou and Tibesti had been studied but that-

> "... soucieux de ménager l'opinion ottomane, à l'heure ou se déroule un conflit vis-à-vis duquel notre neutralité la plus stricte s'impose, le Département a jugé utile de surseoir à toute action jusqu'au moment où l'annonce de la paix nous rendra toute liberté de manoeuvre ...[223]."

In other words, the French Government had decided to take no action that would affect the *status quo* until after the establishment of peace.

4.171 After signature of the Treaty of Peace between Italy and Turkey on 18 October 1912, France was the last of the Powers to recognize Italy's sovereignty over Tripolitania - Cyrenaica. As will be seen in Part V[224], the delay was due to the fact that the French Foreign Ministry saw this as an opportunity to deal with the unresolved boundary question by linking it to the recognition of Italy's sovereignty over the territory and peoples of Libya, which Italy was most anxious to receive. In the end, the boundary question was dropped, and the Franco-Italian Accord of 28 October 1912 was entered into, in which there was no mention of territorial boundaries. A few days later, France recognised Italian sovereignty over Libya without any reservation. However, in 1914, Italy and France agreed to appoint a joint delimitation commission and scheduled a meeting of the commission to be held on 20 July 1914 in Berne. The meeting never took place as a result of the start of World War I.

4.172 Thus, the situation existing in the regions north of Lake Chad at the time of the signature of the Treaty of Ouchy is a key fact in this dispute between Libya and Chad. The most northerly posts occupied by French forces were at Ziguei in Kanem and Arada in Ouadaï, at 15°N latitude. The Senoussi and the indigenous tribes controlled the borderlands north of there. Ottoman military forces were at Bardaï in Tibesti and at Yen in Borkou. In

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[223] *Ibid.*

[224] *See*. para. 5.117, *et seq.*, below.

Ennedi, the Ottoman military post established at Baki, near Oum Chalouba, was still manned in October 1912 (Map No. 34 referred to in paragraph 4.120).

(b) The French War Against the Senoussi and the Indigenous Peoples Starting in 1913

4.173 The withdrawal of Ottoman forces began in March 1912 and was completed as to Borkou and Ennedi by March 1913[225]. After that date, the Senoussi and the Senoussi tribes continued the fight against the French forces[226]. In June 1913, the French Government authorised Colonel Largeau to execute the plans he had already prepared to occupy Borkou, Ennedi and Tibesti "au moment opportun". (French forces had already seized Oum Chalouba in January.) Preparations for the operation were begun in November 1913. The zawiya of Aïn Galakka was occupied and partly destroyed by French forces on 27 November 1913[227], who thereafter proceeded to occupy the zawiyas at Gouro and Ounianga[228]. Only Tibesti remained outside the French military incursions of 1913. However, French forces coming from Bilma entered Zouar and Bardaï in the summer of 1914, and the Senoussi leadership was obliged to move north to Koufra from where it continued the resistance by the indigenous Senoussi tribes.

4.174 The French military occupation was precarious and short-lived. French forces abandoned Tibesti after the outbreak of World War I in Europe, withdrawing to Borkou in August 1916. Military operations against the German colony of Cameroon had severely reduced the French forces available, causing them to withdraw to the south.

4.175 The situation in Tibesti between the end of World War I and 1929 did not change: there was no French presence in the region. In 1929-1930, French military forces reentered Tibesti, as described this way in the official French military history of the region:

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[225] See, "Journal du Cercle" 7 November 1912, 21 January and 11 February 1913. On 30 September 1913, the "Rapport Politique" states, "un détachement turc de 3 réguliers et de 1 blanc rentrant du Bourkou en Tripolitaine aurait été atteint Juin-Juillet traitreusement massacré par des Toubous du Tibesti". They were the remnants of the Turkish forces at Baki in Ennedi. French Archives Annex, p. 447. See, also, Lanne, op. cit., p. 54.

[226] Histoire Militaire de l'Afrique Equatoriale Française, op. cit., pp. 425-433. Exhibit 26.

[227] Ibid., pp. 435-449.

[228] Ibid., pp. 451-454.

> "L'avance italienne en Tripolitaine insoumise provoqua dès 1928 un exode de populations nombreuses qui vinrent se refugier en territoire français. Pour éviter la formation au Tibesti de rassemblements non contrôlés, l'occupation de ce massif fut décidée et confiée aux troupes de l'Afrique équatoriale française. De décembre 1928 à mars 1929 le chef de bataillon Rottier venu de Bilma. Une compagnie fut créée pour occuper Bardai et un nouveau groupe nomade fut chargé d'assurer la sécurité du versant méridionale du Tibesti, d'Abo à Zaouar. La nouvelle compagnie occupa Bardai au début de novembre 1929 ...[229]"

(c) The Italian War Against the Senoussi and the Indigenous Peoples from 1923 to 1932

4.176 As will be examined in Part V, Italy was engaged in the first Libyan war from 1911 to 1917; from 1921 to 1932, the conquest of Libya was assured by the fascist regime through its full political support and the necessary military means. Governors and military men did not have to worry about justifying their colonial policy with the leftist opposition in Rome; they could instead proceed, without second thoughts, to a brutal repression of the indigenous resistance. Northern Tripolitania fell under Italian control in 1923-1925, while the tribes of Southern Tripolitania, protected by the desert environment, continued the rebellion against the Italians. The superiority of the Italian military machine allowed General Graziani, chief commander of the Italian troops, to obtain a series of easy victories in Tripolitania between 1928 and 1930. Each campaign resulted in thousands of dead among the desert tribes.

4.177 Cyrenaica, however, was yet to be conquered. Once the treaties with the Senoussi were proclaimed null and void, the Fascist Government could aim at obtaining direct control of the territory. But the Italian régime had underestimated the strength the Libyan resistance. Organized by the Senoussi under the leadership of a man who was destined to become a legend, Omar el-Mukhtar, the resistance could call on the full support of the entire population[230].

4.178 After a series of partial defeats, the Italian Government assigned command of the military operations in Cyrenaica to General Graziani, the victorious commander of the Tripolitanian campaign. Graziani understood that the core of the resistance resided in the support given to the guerrillas by the local population and proceeded to direct the repression at the civilians. In the summer of 1930, approximately 80,000 people were deported to concentration camps along the coast and confined there for almost two years, with the full support of the Fascist government and the indifference of international public opinion. Graziani clearly saw the real nature of the rebellion as a spontaneous popular movement and perceived the threat it represented to Italian sovereignty. In his Memoirs he noted that:

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[229] Ibid., pp. 485-486. (Emphasis added.)

[230] Omar el-Mukhtar was the sheikh of a zawiya in Cyrenica.

> "It (i.e., the rebellion) was not represented only by a determined number of individuals acting out of the law, but by a much more complex and deeper phenomenon: which, had it still remained hidden and disguised, would have forced us to major sacrifices of blood and money and maybe also to painful renunciations of our sovereignty.[231]"

4.179 The whole of Cyrenaica was in arms against the Italians and the inspiration provided by Omar el-Mukhtar served as a catalyst for the Senoussi resistance. Graziani, utterly confident of the justice of his cause, was determined to destroy the guerrillas, giving the enemy no rest. With the creation of the concentration camps, and deprived of the support of the population, the guerrillas were forced to rely on Egypt for food and military supplies. In order to cut the supplies to the rebels, Graziani decided to build a line of barbed wire of some 270 kilometers from the sea to Djaraboub, constantly patrolled by Italian forces[232]. The population of Cyrenaica became thus prisoners in their own country, while the whole region quickly was turned into a lifeless desert.

4.180 Despite Graziani's systematic extermination, the Libyan people of Cyrenaica under the Senoussi flag continued the struggle until 11 September 1931 when Omar el-Mukhtar, the standard bearer of the Libyan revolution, was wounded and captured by the Italians.

4.181 His trial took place in the ancient seat of the short-lived Cyrenaican Parliament, carefully chosen by Graziani to show that the "compromisory policy" of the pre-Fascist government was forever relinquished[233]. After a summary trial, this 74 year old Senoussi sheikh was hanged before a crowd of 20,000 people forcibly brought from the concentration camps to witness his end. The death of the legendary leader brought active resistance to an end. Cyrenaica had suffered great losses, and its population had been reduced by half between the 1920s and 1931, in part due to death, in part to emigration[234].

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[231] See, Graziani, R.: Cirenaica pacificata, Milano, Mondadori, 1932, p. 53. (A copy of this page is attached as Exhibit 35.)

[232] Evans-Pritchard, op. cit., pp. 188-189.

[233] Graziani, op. cit., p. 273.

4.182 The brutal repression by Graziani in Cyrenaica had succeeded in suppressing the "government of the night" of Omar el-Mukhtar, but it had failed to suffocate the unifying nationalist movement which the fascists had inspired.

CHAPTER III. SUMMARY AND CONCLUSIONS

4.183 In the 19th Century, French colonial expansion in West and Central Africa proceeded along three axes, with their starting points in Algeria, Senegal and the Congo. The aim was to link French colonial possessions in the area neighbouring Lake Chad. Therefore, the countries in the Lake Chad area were the main French colonial objective, only attained by wars against the indigenous peoples from 1900 on, whose resistance was organized by the Senoussi. By 1930, these wars had disrupted historical ties and trade routes between the Sudan and the Mediterranean across the Sahara and had shattered the social organization of the indigenous peoples in the area, including their religious centers, their economy and the traditional "parcours de nomadisation" of the tribes.

4.184 The advance of the French military forces in the area of Lake Chad was bitterly opposed by the indigenous peoples. Their principal religious centers - the zawiyas - formed as cultural, educational and administrative centers became, from 1900 on, centers of resistance to the French forces, particularly the zawiyas at Bir Alali and Aïn Galakka. Between 1910 and 1913, the French authorities in the area undertook to reach a modus vivendi, dealing with the leadership of the Senoussi Order as a representative of the indigenous peoples and treating it as virtually an autonomous political organization. A de facto line between French force and the forces of the Senoussi and of the Ottomans was accepted. In 1914, the recognition by the French of the status of the Senoussi was reflected in Colonel Largeau's proposal to yield Gouro to the Senoussi.

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[234] Rochat, G.: Il colonialismo italiano, Rome, Loescher, 1974, p. 101.

4.185 The French military incursions into the area were also opposed by the Porte and by the Ottoman authorities of the vilayet of Tripoli, which had for centuries maintained close human, cultural and economic ties with the Sudanic Kingdoms. At first, the Ottoman Empire limited its opposition to the diplomatic level, repeatedly and strongly protesting between 1890 and 1899 the Anglo-French agreements of 1890, 1898 and 1899 that had established "spheres of influence" for the future colonial expansion of France and Great Britain. But after 1908, when French colonial expansion had progressed to Kanem and Ouadaï, the Ottomans created military posts and joined the Senoussi in maintaining control over the regions in Tibesti, Borkou, Ounianga, Erdi and Ennedi.

4.186 This situation led to an agreement to commence negotiations between France and Turkey, foreseen for the last months of 1911, to delimit the boundary between Tripolitania and the French possessions. The Italo-Ottoman war of 1911-1912 ended these negotiations. As a result of the War, Ottoman forces were called back from Tibesti, Borkou and Ennedi and had been entirely withdrawn from the area by the end of 1913. After Italy had succeeded to the Ottoman rights and title over the territory and peoples of Libya, France again proposed to open delimitation negotiations, this time with Italy; but World War I prevented the work of the joint commission from getting underway. Thus, at the time of the outbreak of World War I, no territorial boundary between Libya and France or its possessions had been agreed south of Ghadamès; only de facto lines between the opposing forces had been agreed and observed until the Ottoman Empire was defeated in 1912.

4.187 The French claims to areas north and east of Lake Chad were sought to be justified on the basis of the division of "spheres of influence" agreed with Great Britain in 1898 and 1899. But these acts had ignored the titles to the territories of the inhabitants as well as the long-standing rights and titles of the Ottoman Empire in these regions. The evidence is clear that at the time when "spheres of influence" were agreed between France and Great Britain, France had no effective presence in the territories that had been reserved for it. When the French Government by Decree established the "circonscription des pays et protectorats du Chad" in September 1900, French military forces had not yet penetrated areas to the north of Lake Chad. During the period between the French seizures of the Senoussi zawiyas of Bir Alali in January 1902 and Aïn

Galakka in December 1913, French military posts in the area did not extend north of a line between Ziguei in Kanem and Arada in the Sultanate of Ouadaï. Throughout this period, Tibesti, Borkou, Ounianga, Erdi and Ennedi were under the control of the Senoussi tribes, augmented by Ottoman forces after 1908.

4.188 The territory and peoples over which the Ottoman Empire had sovereignty was transferred to Italy by the Treaty of Ouchy, and this transfer of sovereignty was repeatedly acknowledged by France and Great Britain without any reservation. The sovereignty as transferred embraced the territory and peoples of Tibesti, Borkou, Ounianga, Erdi, and Ennedi, then under the joint control and shared authority of the Senoussi and the Ottoman Empire; and it embraced an area which the Ottoman Empire had repeatedly claimed as part of the Tripolitanian hinterland. The peoples inhabiting these regions within the Tripolitanian hinterland held title to them as politically organized societies. In the Libya-Chad borderlands, these peoples were the indigenous tribes led by the Sénoussi. The precarious and temporary military invasion of this area by French forces only occurred at the end of 1913. The Senoussi tribes were neither conquered nor pacified, and there were no formal agreements entered into between France and the Senoussi unlike the situation between the Senoussi and Great Britain and Italy. There was no attempt at all by the French to settle in the area; and the French military activities in this region were undertaken for the security and defense of the regions around Lake Chad and further south, lying generally to the south of 15°N latitude. Thus, the French military moves had no effect on the title of the indigenous peoples or on the rights and titles of the Ottoman Empire, that had been passed on to Italy in 1912.

PART V

THE HISTORICAL BACKGROUND OF THE DISPUTE

5.01 In this Part, the focus shifts to the treaties, agreements, accords and declarations directly related to this dispute, including the related diplomatic exchanges, coupled with revelations from the diplomatic archives now open for inspection. The various claims and proposals by the Ottoman Empire and by the principal colonial Powers concerned form an important part of this history.

5.02 Two major points emerge: first, that at no time was an agreed boundary established that was binding on either Libya or France along the part of Libya's frontier that today concerns Chad, or that today is binding on either Libya or Chad under international law; second, that from this history there may be extracted elements to assist the Court in its role of attributing territory within the Libya-Chad borderlands on the basis of which Party, Libya or Chad, has the better claim to title.

5.03 In the 1955 Franco-Libyan Treaty, Libya and France recognised that the frontiers separating their respective territories would be those that resulted from international agreements in force at the date of the constitution of Libya ("sont celles qui resultent des actes internationaux en vigueur à la date de la constitution du Royaume Uni de Libye")[1]. So an analysis of the historical background of the dispute might have begun with the declaration of Libya's independence in 1951 or with the 1955 Treaty and then have reverted to a review of the "actes internationaux" listed in Annex I to the Treaty.

5.04 Such an approach would be entirely inadequate, for it would fail to take account of a great many relevant events. Indeed, the listing of "actes internationaux" in Annex I to the 1955 Treaty was itself incomplete and was not intended to be exclusive, as Chad has recently acknowledged[2]; and the 1955 Treaty was but a recent episode in a long period of history bearing on this dispute. Accordingly, this Part has been arranged more or less chronologically so as to take into account all of these facts. It has been separated into two Chapters.

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[1] Treaty of Amity and Good Friendship between Libya and France, 10 August 1955, International Accords and Agreements Annex, No. 28.

[2] See, para. 5.475, et seq., below.

Chapter I deals with the events through 1951, when Libya became independent. The "actes internationaux" up until that time, which were in effect on 24 December 1951, require careful analysis in the light of Article 3 of the 1955 Treaty. Chapter II continues the history from 1952 until 1990, when this case was brought before the Court.

5.05 Libya believes that this chronological analysis demonstrates beyond any doubt that when Libya and France signed the 1955 Treaty there existed no agreed boundary between Libya and France's possessions relating to territory that now concerns Chad. In fact, the only boundary ever agreed to the east of Toummo was the delimitation set out in the 1935 Treaty of Rome between France and Italy. However, the exchange of ratifications specified in that Treaty, as a condition of its entering into force, never took place. When the French Government sat down to sign the 1955 Treaty pretending publicly to believe that the renvoi in Article 3 to various "actes internationaux" had the effect of creating a conventional international boundary between Libya and France's possessions in the area lying east of Toummo, such a belief was wrong; and in this respect the representatives of the French Government seriously misinformed the Libyan Government at the time. Since that day, nothing has occurred to alter the situation as it existed at the time of Libya's independence: there still is no conventional territorial boundary between Libya and Chad.

CHAPTER I. FROM 1885 TO 1951

SECTION 1. The 1885 Conference of Berlin

5.06 The Berlin Conference and the General Act that emerged from it were the prelude to the colonial partition of Africa that occurred within a remarkably short period of less than 30 years[3]. The Ottoman Empire was not initially invited to participate in the Conference[4]; when it finally was given a seat, the Porte's representative made it clear that the Ottoman Empire considered the work of the Conference to concern the territory of West Africa and not East or

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[3] The text of the General Act of Berlin of 26 February 1885 may be found in Hertzlet, E.: Map of Africa by Treaty, Vol. II, 3d ed., 1967 (English text); and in De Martens, G.: Nouveau Recueil Général de Traités, 2ème serie, Vol. X, 1885, reprinted in 1967 (French text). The English and French texts are attached as International Accords and Agreements Annex, No. 1.

[4] Italy also was not on the initial guest list.

North Africa in which it had territorial rights. Statements to this effect were recorded in the Protocol to the Conference by Said Pacha, the Ottoman representative, and no objection was ever made to it during the Conference[5].

5.07 In Articles 34 and 35 of the General Act of 1885, the ground rules for the acquisition of African territory were set out. They only concerned the taking of possession of land on the coasts of the African continent, however, in spite of an attempt by Great Britain, which was opposed by France, to broaden their application to the interior of Africa[6]. Thus, other than being the starting point of the main colonial expansion into Africa, the General Act provided no basis for asserting claims over territory in Africa over which the Ottoman Empire considered it had rights. The Ottoman Empire considered that its statement of reservation incorporated into the Protocol of the Conference without objection constituted the recognition by the other Powers of their obligation to respect the Ottoman Empire's territorial rights in Africa. This interpretation of the Ottoman Empire was made clear by the Ottoman Government on several subsequent occasions, as will be seen below. The 1885 General Act was substantially modified in 1919 as a result of the Convention of Saint Germain-en-Laye[7].

SECTION 2. The Anglo-French Declaration of 5 August 1890

5.08 As illustrated by Map No. 36, in the Anglo-French Declaration of 5 August 1890, Great Britain recognised a French "zone of influence" southward of its Mediterranean possessions down to a line, to be drawn by a boundary commission pursuant to the Declaration, running between Say on the Niger River and Barroua on the western shore of Lake Chad[8]. This was more than the mere recognition of France's hinterland rights south of Algeria[9], as the provision for a boundary commission and the subsequent delimitation of a boundary in the Anglo-French Convention of 1898 demonstrated.

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[5] De Martens, op. cit., pp. 220, 245, 264, 272, 364 and, especially, p. 336.

[6] Ibid.

[7] The text of the Convention has been reprinted in Am. J. Int'l L., Vol. XV, 1921, Supp. 314.

[8] Anglo-French Declaration of 5 August 1890, International Accords and Agreements Annex, No. 3.

[9] It was in exactly these terms - hinterland rights - that Lord Salisbury described the Declaration to the House of Lords on 11 August 1890. See, reference to this speech in Robinson, R. and Gallagher, J.: Africa and the Victorians, Second Edition, London, The MacMillan Press Ltd., 1981, p. 303.

5.09 The 1890 Declaration provoked a protest from the Ottoman Empire. This protest was, in a sense, anticipated by France and by Great Britain, for on the very day they signed the Declaration, Lord Salisbury and Ambassador Waddington (for France) exchanged *notes verbales* containing the following statement by each (in its English version):

> "In signing the arrangement of the same date as this note, I desire to record that it does not affect any rights which His Imperial Majesty the Sultan may have in the regions which lie on the southern frontier of his Tripolitanian dominions[10]."

5.10 The Ottoman protest came in a *note* dated 30 October 1890 delivered to Great Britain and to France, in which the Porte protested the 1890 Declaration as an encroachment on territories over which the Ottoman Empire had rights as part of the Tripolitanian *hinterland*[11]. The *note* proceeded to spell out the extent of the zone to which these Tripolitanian *hinterland* rights attached. This zone is portrayed on *Map No. 37*. A comparison between the territory embraced by the Ottoman claim and by the 1890 Declaration's zone of French influence is shown on *Map No. 38*. The north/south extent of each claim is almost the same. Later assertions by the French and British that the Ottoman claim was exorbitant must be evaluated in the light of this fact.

5.11 Both France and Great Britain replied to this protest. The French reply expressed reservations as to the doctrine of *hinterland* set out by the Porte, and France declined the invitation in the Porte's *note* to enter into discussions on the subject, since the region "paraissait jusque-là être restée complètement en dehors de l'action régulière du Gouvernement Ottoman"[12]. The incorrectness of such a view has been extensively demonstrated in Part IV

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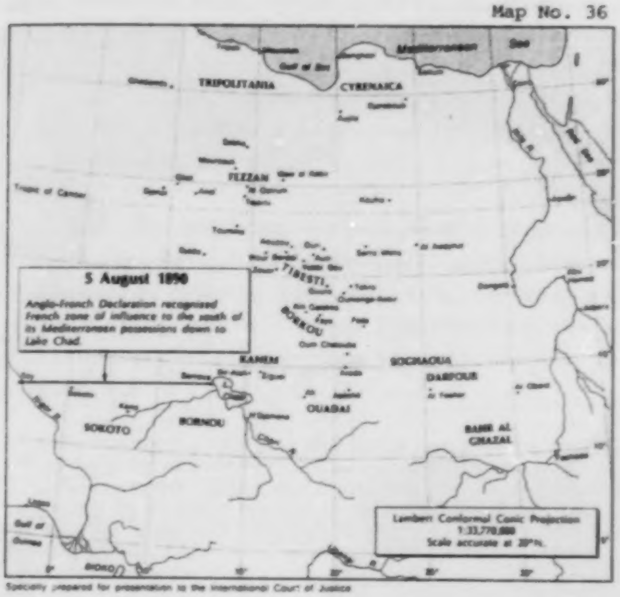
[10] In its French version, the concluding phrase was "dans les régions situées sur la frontière sud de ses provinces tripolitaines". Waddington-Salisbury *note* of 6 August 1890, *Italian Archives Annex*, p. 1.

[11] A copy of the Ottoman *note* of 30 October 1890 was annexed to a letter from the Italian Chargé d'Affaires in Constantinople to the Italian Ministry of Foreign Affairs of 30 January 1891, *Italian Archives Annex*, pp. 3-4.

[12] *See*, resumé of the French Reply of 29 November 1890 in the "Note pour le Ministre", of February 1899, *French Archives Annex*, p. 27.

Map No. 36



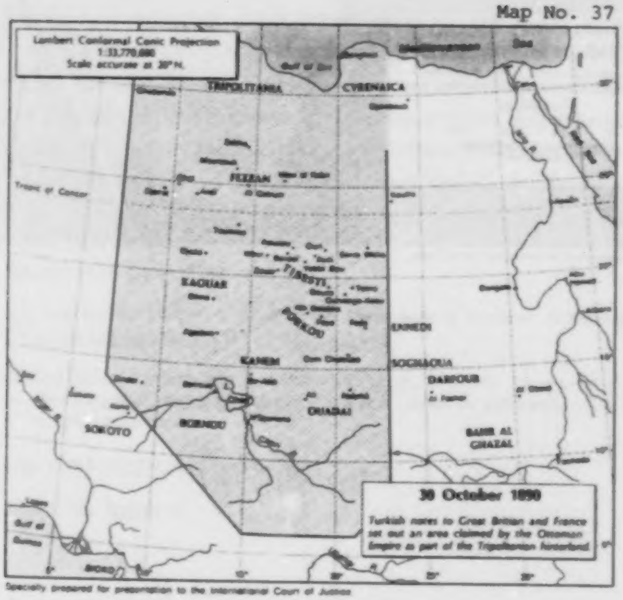
5 August 1890

Anglo-French Declaration recognised French zone of influence to the south of its Mediterranean possessions down to Lake Chad.

Lambert Conformal Conic Projection
1:33,770,000
Scale accurate at 20°N.

Specially prepared for presentation to the International Court of Justice

Map No. 37



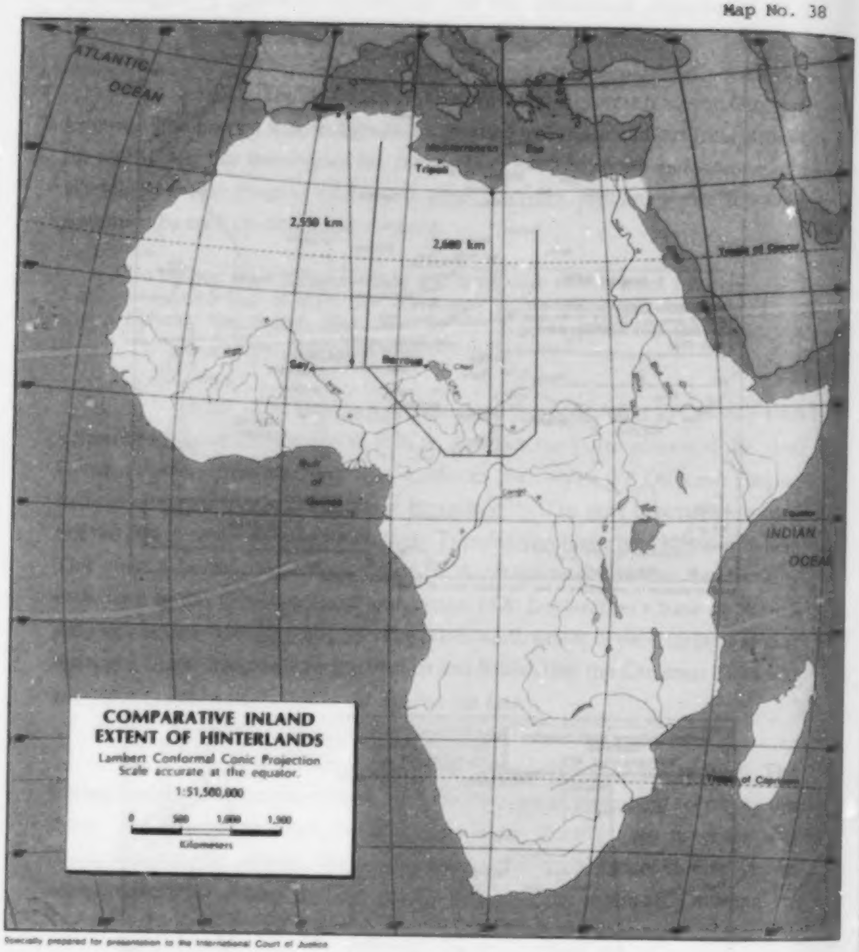
Lambert Conformal Conic Projection
1:33,770,000
Scale accurate at 20°N.

30 October 1890

Turkish notes to Great Britain and France set out an area claimed by the Ottoman Empire as part of the Tripolitanian hinterland.

Specially prepared for presentation to the International Court of Justice

Map No. 38



COMPARATIVE INLAND EXTENT OF HINTERLANDS

Lambert Conformal Conic Projection
Scale accurate at the equator.

1:51,500,000

Specially prepared for presentation to the International Court of Justice

hove. It was France that lacked any basis at all for a zone of influence down to
ne Say-Barroua line[13].

5.12 In Great Britain's reply, Lord Salisbury refused to concede
ny Ottoman claim south of Barroua; north of there, he said, was of concern to
rance and not to Great Britain[14].

5.13 The 1890 Declaration must be read in its historical context.
he part of the agreement that concerned the Algerian hinterland was considered
Great Britain to be relatively unimportant. As Lord Salisbury put it in a
eech to the House of Lords on 11 August 1890, referring to what he called
laces which are utterly unknown not only to your Lordships, but to the rest of
e white human race":

> "Anyone who looks at the map and merely measures the degrees will perhaps be of opinion that France has laid claim to a very considerable stretch of country. But it is necessary to judge land not merely by its extent but also by its value. This land is what agriculturists would call 'very light land', that is to say, it is the desert of Sahara[15]."

eat Britain had just concluded an agreement with Germany which was a
ilestone towards the coming of the British Empire in East Africa"[16] as well as
the British strategy concerning the Nile Valley. France, as a result, wanted
mpensation in Tunis, which Great Britain could not give in the light of the
doubted opposition of Italy, backed by Germany. Instead, France was given, in
1890 Declaration, a free hand in Madagascar and in the huge territories north
the Say-Barroua line, and France in turn acquiesced in the British protectorate
er Zanzibar and Pembe. Moreover, by the 1890 Declaration, Great Britain "set
seal on the strategy of buying off French threats to Egypt and the
diterranean by agreeing to a huge French empire in the Western Sudan[17]".

See, para. 4.46. et seq., above.

See, reference to Salisbury's Reply in the "Note pour le Ministre" of February 1899, French Archives Annex, p. 27.

Quoted and cited in Robinson and Gallagher, op. cit., at p. 303. (A copy of this page is attached in Exhibit, 36). See, generally, Chapter X thereof for a discussion of the context of the 1890 Declaration.

Ibid., p. 294. Exhibit 36.

Ibid., p. 304. Exhibit 36.

The agreement, quite clearly, was only between Great Britain and France; it was recognised by no other Power; and it was protested by the State most concerned, the Ottoman Empire.

5.14 The 1890 Declaration and the reaction it provoked from the Porte in a sense are at the root of the territorial dispute between Libya and Chad today, although the basis of the Ottoman claim had earlier origins. While France gave reasons why it disputed the Ottoman claim, it did not at the time advance the basis of any French claims even though the eastern third of the Say - Barroua line lay directly to the south of Tripolitania, not Algeria, and there was not to be any French presence in the Lake Chad region for another 10 years[18]. However, the Quai d'Orsay was not to remain as complacent about the situation as its official stance might have suggested. In a Ministry of Foreign Affairs note of February 1898, at a time when negotiations were nearing completion between Great Britain and France that culminated in the 1898 Convention, it was acknowledged that "la question a été posée et est restée ouverte entre la Turquie et nous"[19]. The note urgently advised of a Turkish expedition on its way south of Tripolitania "pour châtier des Tibbou, auteurs d'une agression commise contre une caravane"[20]. In the same report France's Consul-General in Tripoli referred to rumours of "l'occupation permanente de certains points sur la route des caravanes entre Kaouar-Bilma et le Kanem", the rumoured occupation being by Turkish troops. He went on to say this:

> "L'établissement de notre influence dans le centre africain sera une oeuvre de longue haleine et, en mettant toutes choses au mieux, il nous faudra du temps pour parvenir de l'Algérie, de la Tunisie ou du Tchad au Tibesti. Mais en réalité le Tibesti, le Borkou, le Ouadaï, le Kanem, le Bornou et une partie du Sahara sont drainés par la route commerciale de caravanes qui, de Gadamès et Ghat, va à Koufra en passant par Kaouar, Bilma, et cette route elle-même est commandée par Kaouar-Bilma qui en forme en quelque sorte le noeud vital, tant par sa situation topographique que par ses salines dont dépend l'approvisionnement en sel de toutes ces régions. C'est d'ailleurs pour s'assurer cette route, et la lettre d'Essad Pacha en fait foi, que la Turquie a, en 1890, formulé les revendications territoriales ci-dessus énoncées.

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[18] See, para. 4.54, et seq., above.

[19] "Note pour le Ministre" of February 1899, French Archives Annex, p. 27.

[20] This information hardly squares with subsequent French assertions that only France was providing protection to the caravan routes and that Ottoman policing in the area was nonexistant. France's principal aim was to divert the caravan traffic away from Tripoli to Algiers and Tunis.

> Il semble donc que nous ne devons à aucun prix nous y laisser devancer par la Turquie, que l'Angleterre aimerait certainement mieux voir que nous dans ce carrefour des routes entre la Méditerranée et le Tchad[21]."

The report urged discreet but prompt action to preempt any such Ottoman mission by putting in place a permanent French establishment at Bilma.

5.15 France's concern was understandable. The 1890 Declaration could have done no more than to establish that as between France and Great Britain an Algeria-Tunisia hinterland claim would incur no British objection. It was not opposable to any third State such as the Ottoman Empire (res inter alios acta). Lord Salisbury's rather off-hand response to the Porte's protest suggested as much; and as is shown below he was very much of that view in respect to the subsequent 1898 and 1899 agreements.

SECTION 3. The Anglo-French Convention of 14 June 1898

5.16 The 1898 Convention confirmed a Protocol signed by the joint delimitation commission appointed pursuant to the 1890 Declaration[22]. The Protocol delimited the frontiers between the British and French possessions to the west of the Niger River. This line was marked on a map annexed to the Convention and referred to therein as map no. 1. This delimitation has no direct bearing on the present dispute. However, Article 4 of the Convention[23] accomplished a delimitation to the east of the Niger as far as Lake Chad between British and French possessions, also illustrated by an annexed map (map no. 2). A reproduction of these two maps, as they appeared in the Livre jaune edition of the 1898 Convention[24], is set out here as Map No. 39. However, it is easier to follow the discussion below by referring to another map - a map which has acquired a certain notoriety - that is the map annexed to the Livre jaune edition of the 1899 Declaration, reproduced here as Map No. 40, for it shows all the lines

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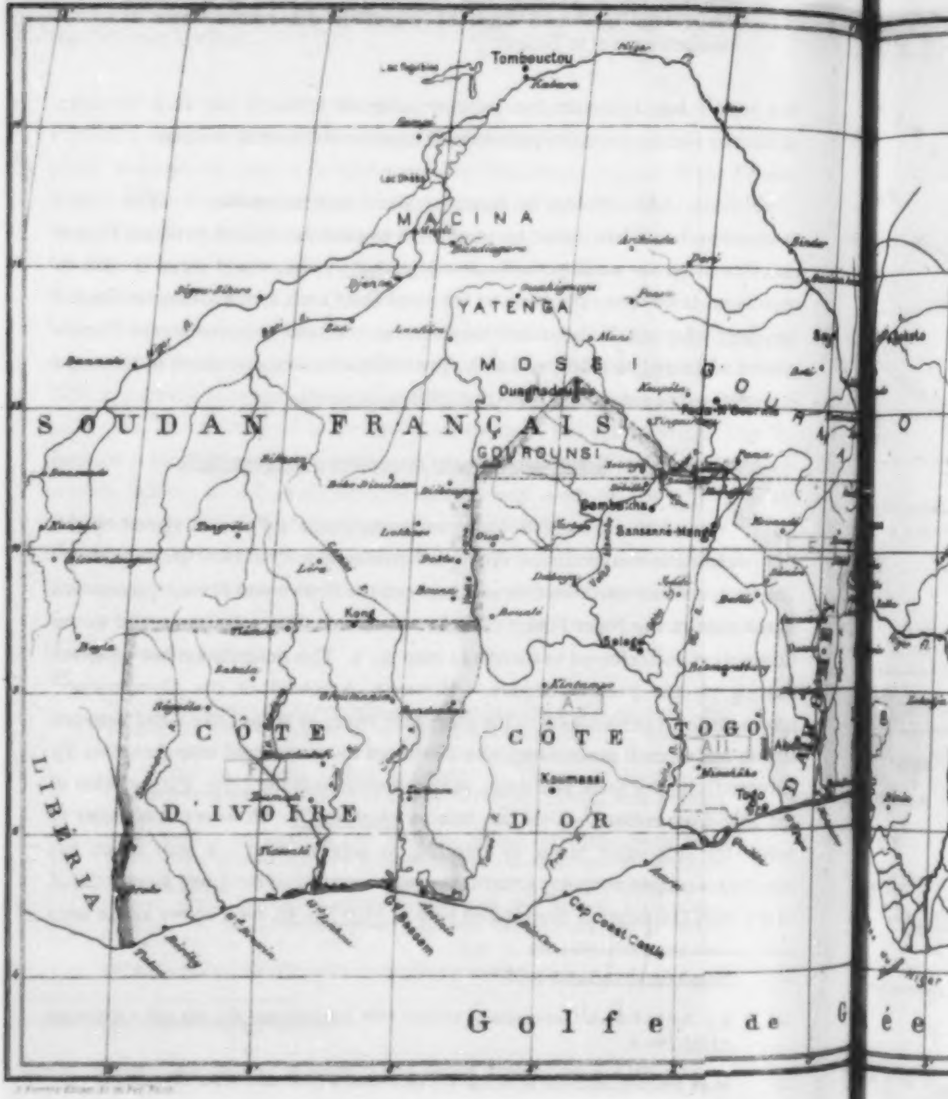
[21] French Archives Annex, p. 28.

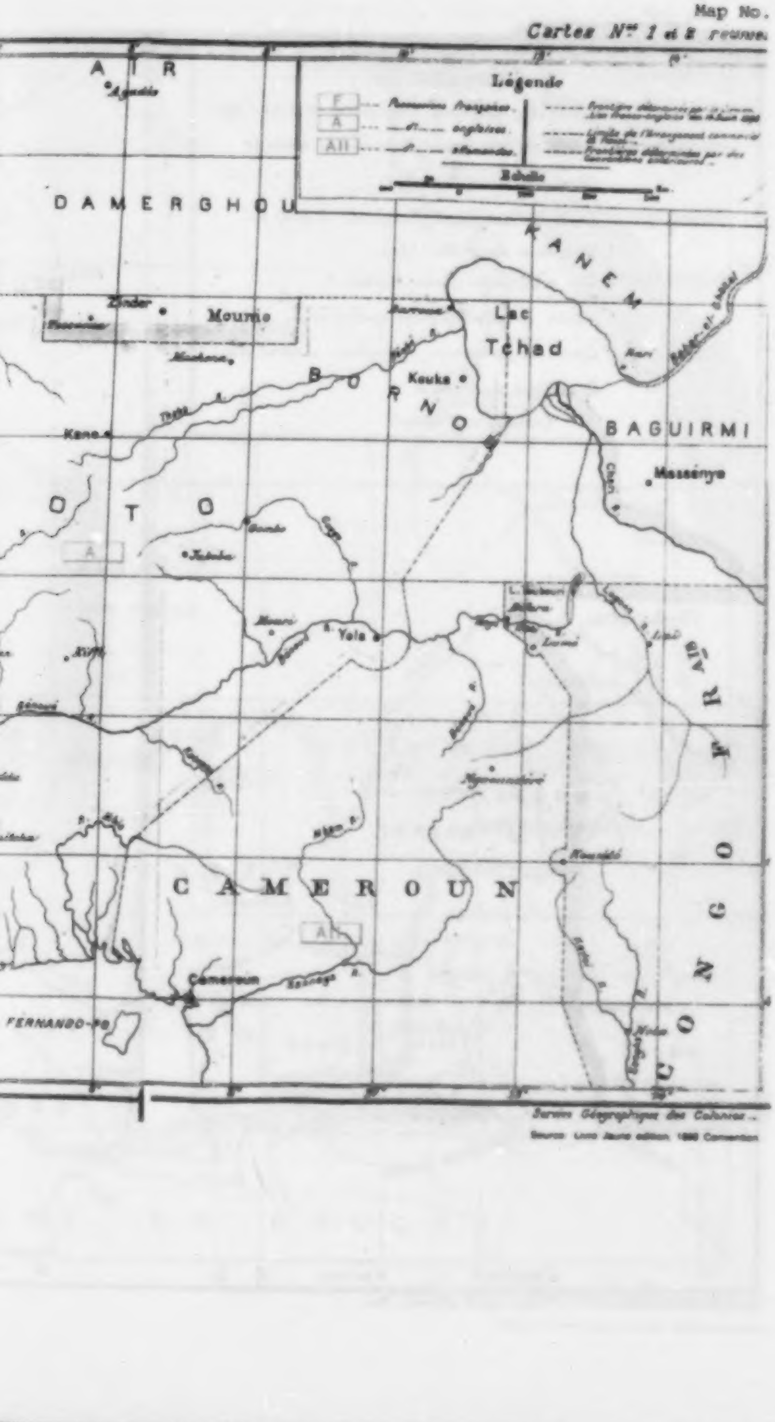
[22] See, Anglo-French Convention of 14 June 1898, International Accords and Agreements Annex, No. 4.

[23] More precisely described as Article 4 of the Protocol confirmed by the Convention.

[24] The Livre jaune is an official publication of the French Government in which important treaties and agreements are reprinted and published together with a selection of the related travaux.


Tombouctou
Kabara
MACINA
YATENGA
MOSSI
Ouagadougou
SOUDAN FRANÇAIS
GOUROUNSI
Gambaga
Sansanné-Mango
Kong
Salaga
CÔTE D'IVOIRE
CÔTE D'OR
TOGO
Koumassi
LIBERIA
Cap Coast Castle
Gd Bassam
A
Golfe de Guinée

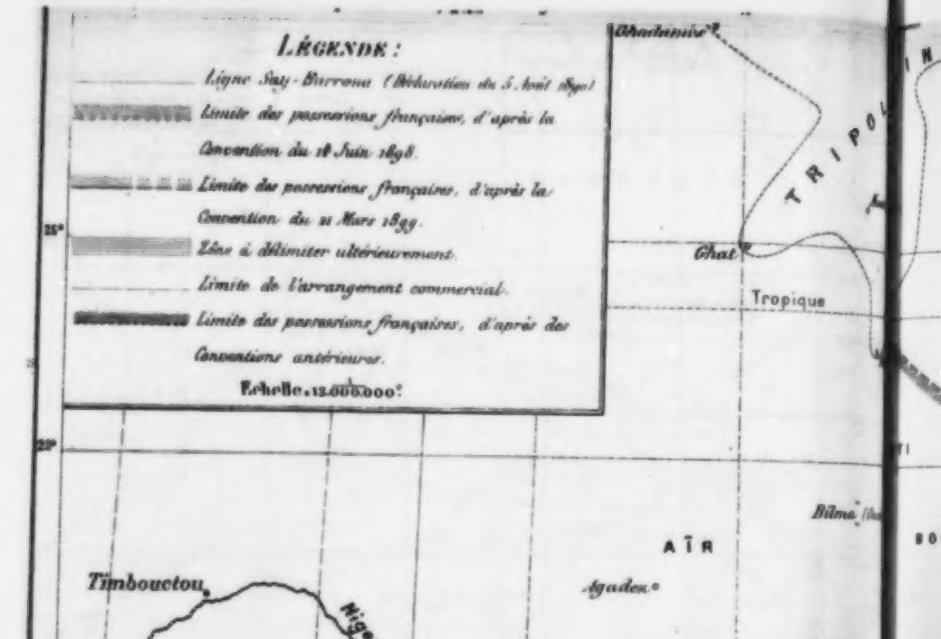
Map No. 39



Cartes Nos 1 et 2 réunies

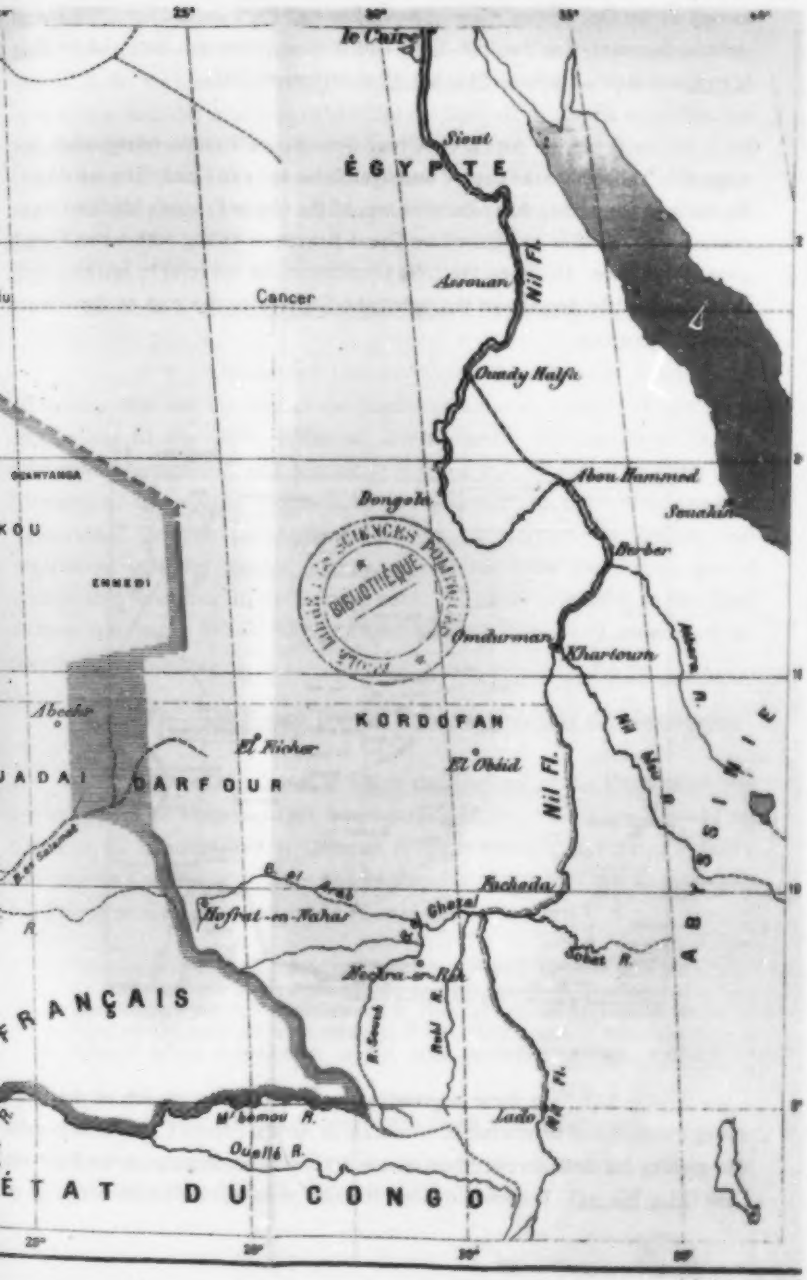
Service Géographique des Colonies.

Source: Livre Jaune édition 1899 Convention



Gravé et imp. par Erhard Frères, 35bis, Rue Denfert-Rochereau, Paris.

Map No. 40



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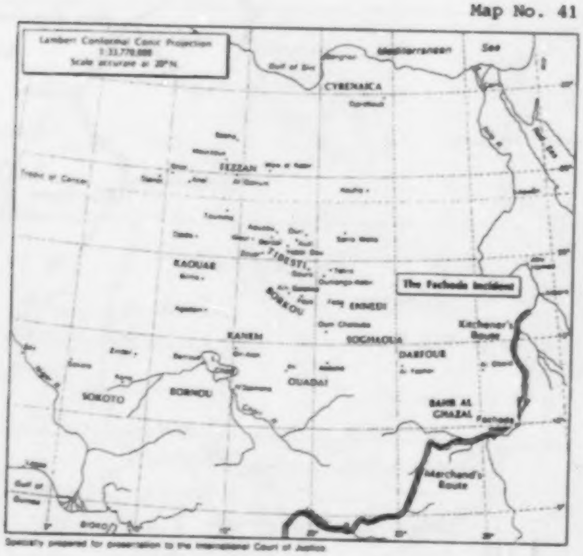
Source: Livre Jaune edition, 1899 Declaration in question, including boundaries that were agreed prior to the 1890 Declaration as well as the Declaration's line between Say and Barroua and the 1898 line of delimitation modifying the 1890 line. The 1899 map has also been put on Base Map C and appears later as Map No. 48 at paragraph 5.93.

5.17 In Article 4, Great Britain and France recognized their respective "spheres" to the east of the Niger as far as Lake Chad. The territory to the north of the modified Say-Barroua line, all the way to France's Mediterranean possessions, was thus recognised by Great Britain as falling within the French zone of influence. However, the 1898 Convention did not refer to territory lying to the east of the line drawn through Lake Chad or to the east of the eastern limits of Cameroon.

Map No. 41



Specially prepared for presentation to the International Court of Justice

5.18 As these negotiations were underway, in one of the more daring escapades of an era full of adventure in Africa, French Captain Marchand was making his dash across Africa to the Nile, which precipitated the Fachoda crisis (Map No. 41). France and Great Britain found themselves on the verge of war. France evacuated Fachoda, and Lord Salisbury was so informed by France's Ambassador in London, Paul Cambon, on 12 January 1899[25]. Lord Salisbury was at the time reminded of his statement to the Baron de Courcel that after things calmed down he would be willing to examine with France "la délimitation des sphères d'actions des deux pays dans le Bahr el Ghazal". It may be noted that this region lay to the west of Fachoda and that Fachoda itself lay approximately at the point where 10°N latitude crosses the White Nile. Thus the area of primary concern at the outset of negotiations was well to the east and south of even Lake Chad.

SECTION 4. The Anglo-French Additional Declaration of 21 March 1899

5.19 Ambassador Cambon's meeting with Lord Salisbury on 12 January 1899 was the start of the negotiations that in a period of only three months led to the 1899 Additional Declaration[26]. The provisions of the Declaration "completed" and became an integral part of Article 4 of the 1898 Convention, for reasons that will be seen further on. Lord Salisbury and Ambassador Cambon personally participated in most of the drafting and negotiation, and the travaux préparatoires of the 1899 Declaration are of considerable relevance to the present case. The views expressed by the Quai d'Orsay and by the British Foreign Office as the conversations progressed are now publicly available.

(a) The French Travaux Préparatoires of the 1889 Declaration

5.20 The manner in which the final text of the Declaration was arrived at will be examined first, based largely on the French travaux. In his report of 12 January 1899 to Delcassé (French Minister of Foreign Affairs), Ambassador Cambon said that he had informed Lord Salisbury that he personally felt that a line could easily be arrived at, or in Cambon's words: -

> "... nous pouvions aisément nous mettre d'accord sur une ligne de démarcation qui, partant du sud de la Tripolitaine et touchant au Darfour, traverserait obliquement le Bahr el Ghazal en suivant la ligne de partage des eaux entre le Nil et l'Oubangui et que, sans arborer notre drapeau sur le Nil, nous pourrions obtenir, pour

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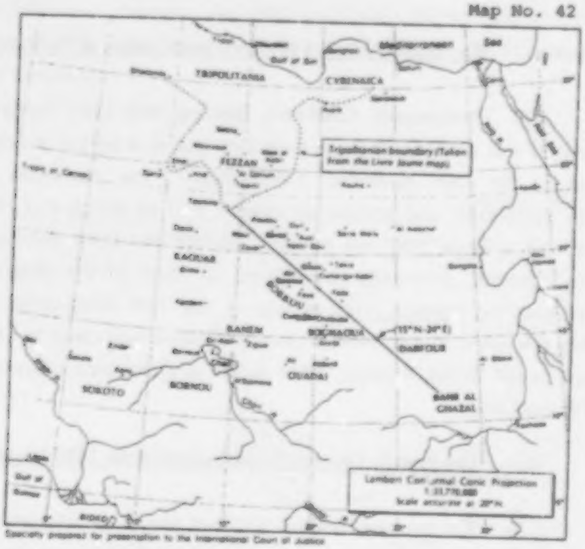
[25] Cambon-Delcassé Telegram, 12 January 1899, French Archives Annex, p. 3.

[26] The final text of the Anglo-French Additional Declaration of 21 March 1899 is attached as International Accords and Agreements Annex, No. 4.

> notre commerce, la liberté de navigation et un point d'embarquement sur (ce) fleuve[27]."

Such a line has been illustrated on Map No. 42. It descends from the southernmost point of the Tripolitania boundary in a southeasterly direction touching the northeast corner of Darfour at about 24°E longitude - 15°N latitude, and then continues south to the Bahr al Ghazal.

Map No. 42



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5.21 Cambon met again with Salisbury on 18 January 1899[28]. According to Cambon's report, Salisbury had referred the Cambon suggestion to Lord Cromer in Egypt from whom he had not yet had a response, but Salisbury had expressed the view that Cambon's suggested basis for a delimitation would encounter no opposition. Salisbury had another problem on his mind, however, for he recalled that, after learning of the 1890 Declaration, the Porte -

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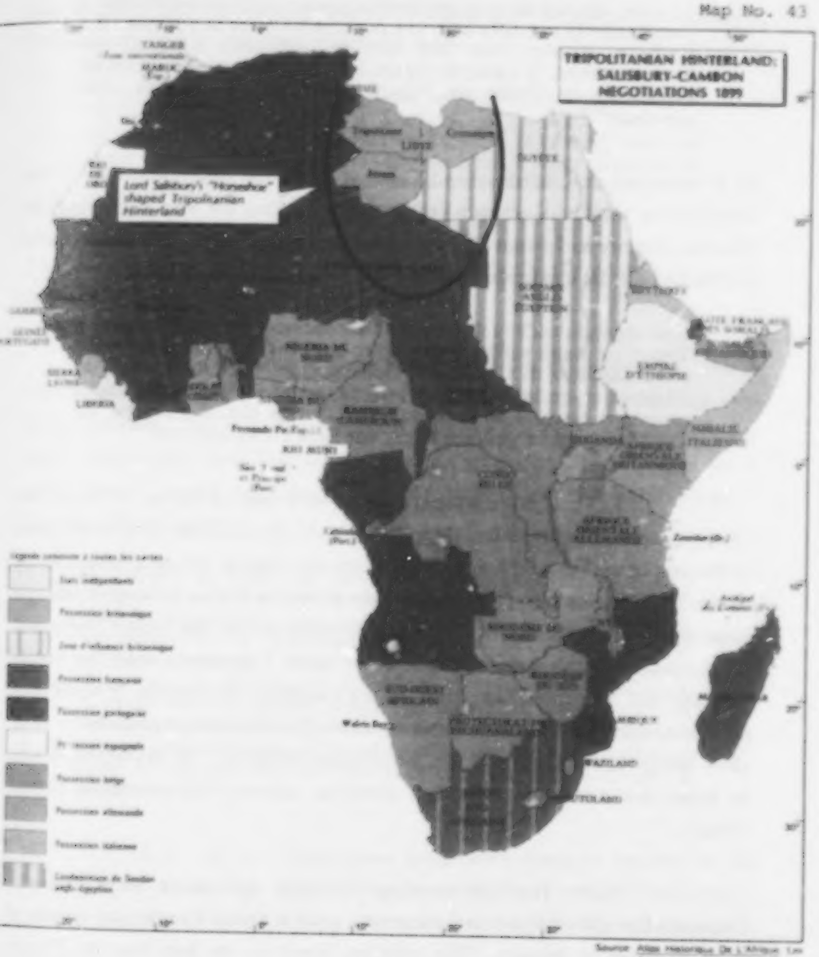
[27] Cambon-Delcassé Telegram, 12 January 1899, French Archives Annex, pp. 3-4.

[28] Cambon-Delcassé Telegram, 18 January 1899, French Archives Annex, p. 6.

Map No. 43



Source: Atlas Historique De L'Afrique, Les éditions du Jaguar © 1988, p. 141

> "... avait protesté au nom des droits du Sultan, et il m'a demandé si j'avais réfléchi aux difficultés que pourrait soulever la Turquie. Il a d'ailleurs reconnu avec moi que ces difficultés n'étaient pas insurmontables. Il a ensuite signalé à mon attention les prétentions éventuelles de l'Italie sur Tripoli et sur l'arrière-pays de cette province[29]."

So it is evident that Salisbury and Cambon were well aware that most of the Cambon line would cut across a region that fell within the area over which the Ottoman Empire had claimed Tripolitanian hinterland rights. Cambon indicated to Delcassé that he had replied as follows:

> "J'ai répondu qu'il était possible de concevoir un tracé laissant à Tripoli un avenir suffisant; que notre but principal était de grouper nos possessions du Congo, de l'Oubangui, du Niger, du Sénégal, de l'Algérie et de la Tunisie et que, ce grand intérêt assuré, nous pourrions laisser à la Tripolitaine un certain hinterland: 'Oui, dit Lord Salisbury, on pourrait tracer une ligne en fer à cheval[30]'."

5.22 If there is superimposed on a map of Africa, north of Lake Chad, the shape of a horseshoe (Map No. 43), with its open end to the north, then to the west of the horseshoe would be Tunisia and Algeria, the open center would be the Tripolitanian hinterland, to its south would be France's Congo-Oubangui possessions, and to the east of the horseshoe would be the Nile Valley, Sudan and Egypt, in the British sphere. This would leave Tripolitania with "un avenir suffisant" and "un certain hinterland", to use Cambon's expressions. It would also provide ample communication between all of France's African possessions as of 1899, which Cambon had said was the principal objective. In this regard, it may be noted that Ambassador Cambon made no mention of a possession named "Chad".

5.23 Then the exchange of drafts and sketch maps began[31]. Cambon's first sketch apparently adopted a quite different line than he appeared to propose on 12 January. The evidence points to the fact that the French colonial office had entered the picture. According to his dispatch of 21 January to Delcassé, the line he now drew on a sketch map-

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[29] Ibid. Delcassé replied to Cambon on 21 January expressing great interest in Salisbury's unexpected concern over Italy's interests. See. Delcassé-Cambon Dispatch, 21 January 1899, French Archives Annex, p. 8.

[30] That is, "in the shape of a horseshoe". Cambon-Delcassé Telegram, 18 January 1899, French Archives Annex, p. 6.

[31] To date, research in the archives has failed to locate these sketch maps.

> "... nous assurerait la possession des oasis du Tibesti et du Borkou, l'Ouadaï et une partie du Darfour; il est vrai que nous abandonnerions la presque totalité du Bahr el Ghazal, mais cet inconvénient serait amplement compensé par la reconnaissance de notre autorité sur toutes les régions qui s'étendant au nord et à l'est du lac Tchad[32]."

So France in the negotiations seemed to have radically altered its aims and to have shifted its interest far to the north and west.

5.24 Apparently, Italy got wind of these discussions. This is reflected in Cambon's reply to Delcassé regarding Salisbury's solicitude over Italian interests. Cambon offered his personal view that ultimately attributing to Italy "l'arrière-pays de la Tripolitaine et de la Cyrénaïque, c'est à dire en fait le désert libyen" would not disturb France's possessions in central Africa[33]. Delcassé did not agree:

> "Le désert de Libye est situé au sud de la Cyrénaïque et il appartient en effet, je le reconnais, aux régions qui d'après les pourparlers en cours, rentreraient dans la sphère anglaise. Mais, en arrière de la Tripolitaine, s'étendent des pays que nous réclamons comme devant être compris dans notre sphère d'influence, le Borkou, le Tibesti, le Ouanianga, le Ouadaï, le Kanem, avec la grande route de caravanes qui conduit de Mourzouk à Koufra en passant par des points dont la possession, comme celle de Kaouar et de Bilma, est d'une importance décisive pour la sécurité de nos établissements du littoral et de la Méditerranée[34]."

5.25 As the negotiations progressed, France's interest in this region became increasingly apparent; and Lord Salisbury was not enthusiastic, pointing out how little was known about this territory[35]. The Cambon line, instead of following exactly the "ligne des hauteurs du Tibesti", now would have placed all the oases of this region in the French zone. On the other hand, Great Britain wanted all of Darfour, which meant departing from the principle of following "la ligne de partage des eaux". Hence, the British proposed agreeing to depart from the principle of "ligne des hauteurs" in favour of France in Tibesti and Borkou in return for a similar departure in Great Britain's favour in Darfour[36]. As Lord Salisbury recorded in a Foreign Office note of February 1899:

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[32] Cambon-Delcassé Dispatch, 21 January 1899, Exhibit 37. See, para. 3.23, above, and the fn. referred to there, dealing with the confusing fact that there are two regions called "Bahr al Ghazal".

[33] Cambon-Delcassé Dispatch, 23 January 1899, French Archives Annex, p. 9.

[34] Ibid., fn. 1 to the Dispatch, French Archives Annex, p. 10. This brings out the fact that France at that time had in mind the security importance of the Tripolitanian hinterland to its Mediterranean possessions.

[35] Cambon-Delcassé Telegram, 25 January 1899, French Archives Annex, p. 11.

> "In point of mere territory this would be a far more valuable concession than would be the concession of the western part of Darfur. I admitted that it was not so much of an object to us, as we did not attach much importance to any arrangements that were made to the north of the 15° parallel of latitude ...[37]."

The Quai d'Orsay accepted this proposal; but it was concerned that nothing should appear in the agreement as an implicit recognition by France of the British position in Egypt. This prompted the idea that the Declaration might be tagged onto the 1898 Convention, which had not yet been ratified. Lord Salisbury remained concerned over the Ottoman Empire's possible reaction, and leaned toward an exchange of letters[38]. Apparently, M. Cambon had the same concern, for Lord Salisbury ended his 9 February note with these comments:

> "The French Ambassador's mode of addressing himself to these questions - which I reminded him was somewhat at variance with that he had assumed at the first meeting we held on the subject - appeared to me to indicate that he was rather following the instructions of the French Minister of Foreign Affairs, than the policy to which he himself would have given preference. He quite agreed with me that when we reached what might be fairly called the Hinterland of Tripoli, we should so frame our agreement as to avoid any appearance of neglecting the rights which the Sultan might advance to that region, in consequence of his possession of the Province of Tripoli, which is under his immediate government[39]."

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[36] Cambon-Delcassé Telegram, 8 February, 1899, French Archives Annex, p. 13.

[37] Lord Salisbury's Note, 9 February 1899, FO 141/344, British Archives Annex, p. 1.

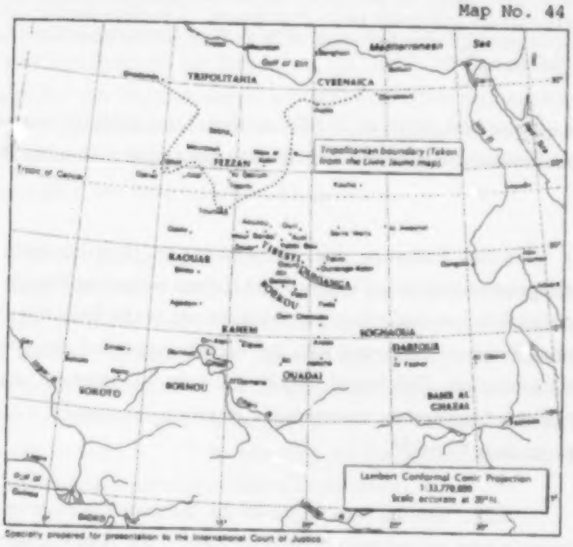
[38] Cambon-Delcassé Dispatch, 10 February 1899, French Archives Annex, p.14.

[39] Lord Salisbury's Note, 9 February 1899, op. cit.

5.26 On 16 February, Cambon produced a draft he had prepared n the form of a modification of Article 4 of the 1898 Convention[40]. The line escribed in the draft purported to concern only spheres of influence. (It will be een as this story proceeds how the draft Declaration evolved into a delimitation f boundaries to the south of 15°N latitude and only of spheres of influence to the orth.) Starting from the south, at 11°N latitude, the line in Cambon's draft oved north to divide Darfour and Ouadaï as far as 15°N latitude. It then escribed the rest of the line in this, imprecise way:

> "A partir de sa rencontre avec le 15° degré de latitude nord, cette ligne suivra ce parallèle jusqu'à la rencontre d'une ligne qui gagnera la frontière tripolitaine, de façon à laisser dans la sphère française la totalité des oasis formant le Borkou et le Tibesti[41]."

Map No. 44



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See, Annex to the Cambon-Delcassé Dispatch, 16 February 1899, French Archives Annex, p. 17.

Ibid.

Map No. 44 shows the various points referred to above as well as the Tripolitanian frontier, as shown on the Livre jaune map (Map No. 40). It seems clear that the second sector line, which was to end at the Tripolitania frontier, while leaving on the French side of the line the oases of Tibesti and Borkou, was envisaged to begin at the intersection of the first sector boundary with 15° N latitude. Delcassé informed Cambon several days later that the line he proposed was fine, with certain changes[42]. He said that other regions should be included such as Ounianga and other districts lying between the oases and Darfour.

5.27 Lord Salisbury then tabled a draft that indicated only the delimitation between Ouadaï and Darfour as far north as 14°20'N latitude. Cambon informed Delcassé why the delimitation had been stopped there:

> "(Lord Salisbury) pense, qu'au delà de ce degré, il est inutile de faire une délimitation précise. Outre la difficulté d'établir un tracé dans ces régions à peu près inconnues, Lord Salisbury semble redouter les approches de la Tripolitaine. Il préfère déclarer d'une façon générale que le Tibesti et le Borkou seront dans notre zone d'influence[43]."

So it was evident that, north of 14°20'N latitude, Lord Salisbury considered there was a risk of encroaching on the Tripolitanian hinterland claimed by the Ottoman Empire.

5.28 Following the instructions he received from Paris, M. Cambon suggested including Ounianga and Ennedi within the French sphere and reported that Salisbury had raised no objection. As to the form this arrangement should take, Salisbury concurred with the French suggestion that it be added to the 1898 Convention. This would simplify the task of Parliament, which had not yet ratified the Convention, and such an approach "permettait d'échapper aux réclamations de la Porte"[44].

5.29 During these negotiations, the question arose of referring to and annexing a map, as had been done in the case of the 1898 Convention. There was some discussion over which map to use as the base of reference, the French preferring a German map (Justus Perthes, 1891) and the British preferring a

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[42] Delcassé-Cambon Telegram, 21 February 1899, French Archives Annex, p. 18.

[43] Cambon-Delcassé Dispatch, 22 February 1899, French Archives Annex, p. 19.

[44] Ibid.

French army staff map (1895 edition, El Fasher). But from the outset the French opposed annexing a map, for as Cambon observed a map would necessarily portray a line extending to the region of the Upper Nile, and France remained highly sensitive over anything that appeared to be a recognition of the British position in Egypt[45].

5.30 The Quai d'Orsay accepted 14°20'N latitude as the northern limits of a "precise delimitation" so long as the regions to be included in the French sphere were identified in the text, and they suggested adding Soghaoua[46]. Delcassé perceived a particular advantage to Salisbury's stopping point of 14°20'N. For the British had proposed that the new agreement under negotiation extend the provisions of Article 9 of the 1898 Convention to the territories to be covered by the new agreement. Article 9 was a commercial arrangement under which English and French goods were to receive equal treatment inside the line appearing on map no. 2 annexed to the 1898 Convention (Map No. 39). Delcassé noted that the prolongation of the Say-Barroua line just about coincided with Salisbury's northern limits for the first sector, that is 14° 20'N latitude (Map No. 45). He suggested that the commercial arrangements could thus be described in such a way as to minimize any reference to territories located in the Valley of the Nile. This approach to the commercial arrangement was ultimately adopted in the last paragraph of the 1899 Additional Declaration.

5.31 Ambassador Cambon tabled a new draft on 27 February 1899[47]. It made reference to the Justus Perthes map in respect to the Darfour - Ouadaï delimitation between 11°N and 14°20'N latitude; but in his dispatch of the same day to Delcassé, Cambon again opposed annexing a map. The draft dealt only with the French sphere that Great Britain would recognise to the west of the line indicated; it acknowledged no British sphere to the east of the line and, hence, was not reciprocal. There was also no distinction made in the draft between spheres of influence and delimited boundaries.

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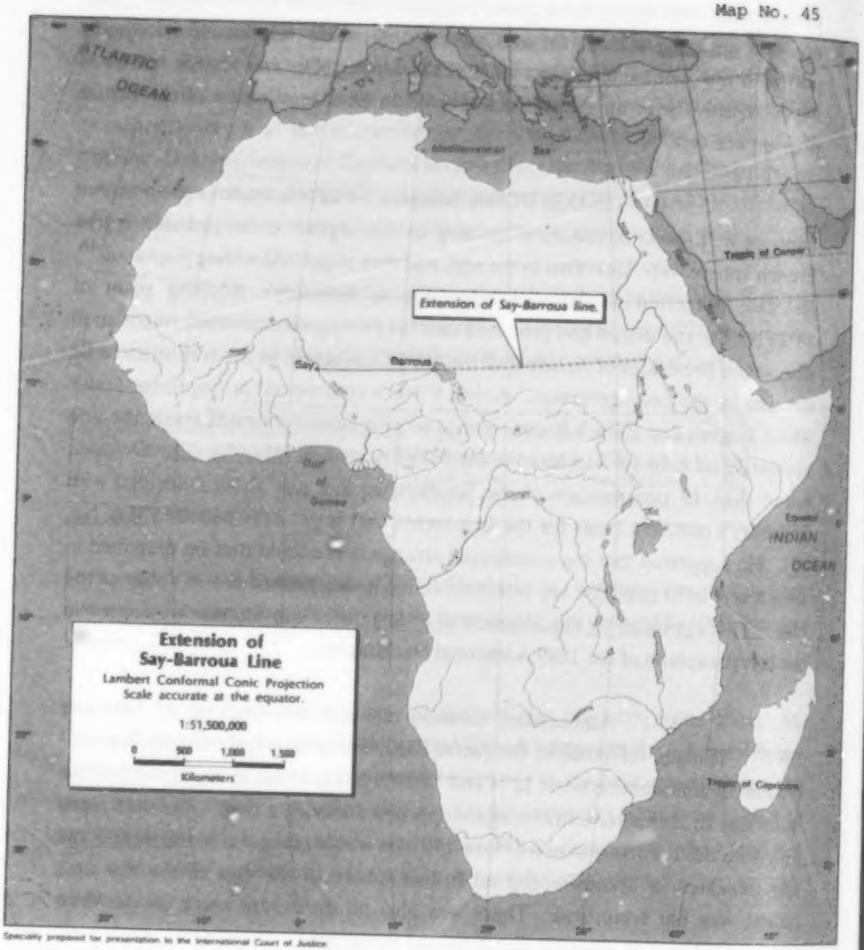
[45] Delcassé-Cambon Dispatch, 25 February 1899, French Archives Annex, p. 21.

[46] Ibid.

[47] Cambon-Delcassé Dispatch, 27 February 1899, French Archives Annex, p. 25.

Map No. 45



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5.32 With the tabling of a British counter-draft on 1 March 1899, British sensitivity to Turkish (and Italian) claims surfaced once again[48], for the revised Article 3 contained two important changes[49]. First, it was reciprocal in that each Government engaged "not to attempt to make any territorial acquisitions nor to exercise political influence" to the east and west of the line proposed. Second, in contrast to the southern sector of the line - to the east and west of which British and French spheres were each recognised, respectively - north of the parallel of latitude of a designated point on the Abéché-Nyeri road (approximately 14°20'N latitude), no recognition of spheres of influence was contained in Article 3 of the draft, which continued the line northwest to the wells of Toummo. Thus, although the British draft of Article 3 had included on the west of the line the various oases mentioned at earlier sessions by the French, this provision only set out Great Britain's obligation not to attempt to acquire territory or exercise political influence to the west of such a line, and France's reciprocal obligation east of the line. It said nothing about the rights of France and Great Britain on either side of the line. The British draft also contemplated annexing the French army staff map of 1895, and it placed two districts, one being Zaghawa (Soghaoua), to the east of the line, on the British side.

5.33 Cambon explained the changes in this way to Delcassé:

> "Voulant sans doute tenir compte des préoccupations plusieurs fois exprimées par lui de ne pas provoquer les susceptibilités turques ou italiennes, le Premier Ministre ne parle plus d'attributions de territoire et se borne à enregistrer une sorte de simple obligation unilatérale de la part de chacun des Gouvernements contractants ...[50]"

Cambon suggested checking whether the two districts proposed to be to the east f the line were not an integral part of territory that France claimed, but he xpressed willingness to give in on this point if necessary. He added:

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[8] While negotiations were in full swing, the Quai d'Orsay was investigating rumours of a Turkish expedition to Tibesti and Bilma. See, para. 5.14, above. See, also, the Annex to Cambon-Delcassé Dispatch, 2 March 1899, French Archives Annex, p. 29.

[9] Ibid., French Archives Annex, p. 32.

[0] Ibid., French Archives Annex, p. 30.

> "En tout cas je pense que le meilleur tracé à adopter consisterait à remplacer la ligne, assez vaguement désignée dans le projet anglais par un méridien[51]."

He did not elaborate on how this was to be done. But the main concern over the British counter-draft was whether it could be interpreted as an abandonment by France of its rights in Egypt.

5.34 The Quai d'Orsay's position as to the British draft of 1 March was imparted to Cambon in Delcassé's communication of 7 March 1899[52]. It adopted a rather hard bargaining stance. France was ready to give in to the British as to the map to be referred to but expected compensation for doing so. As to Article 3, Delcassé wrote that all Great Britain should seek is that France be limited by the line from going further to the east but that any reference to Great Britain to the east of the line should be deleted. It was once more clear that France's main preoccupation was to avoid any allusion to the situation in Egypt. Delcassé insisted on the formula: "Le Gouvernement de Sa Majesté britannique reconnaît comme tombant dans la sphère française le pays à l'ouest d'une ligne ainsi définie ..."[53]. Paris was ready to give in on the district of Soghaoua if the above revision could be agreed; but it wanted the commercial agreement to be described as lying south of 14°20'N latitude.

5.35 Clearly the negotiations had bogged down, to the point that Lord Salisbury proposed agreeing in principle and conferring the task of establishing the line to an "international commission"[54], subsequently clarified to mean a mixed Anglo-French commission. This thought was set aside for the moment, and another British draft was tabled on 19 March[55]. The first segment of the line was described as a "ligne frontière", and it apparently was intended to continue north to 18°N latitude. The draft maintained the idea of reciprocal recognition of spheres of influence on either side of that segment of the line. How the line was to continue north to 18°N was unstated and is confusing in

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[51] Ibid., French Archives Annex, p. 31.

[52] Delcassé-Cambon special letter ("Lettre Particulière"), 7 March 1899, French Archives Annex, p. 35.

[53] Ibid., French Archives Annex, p. 20.

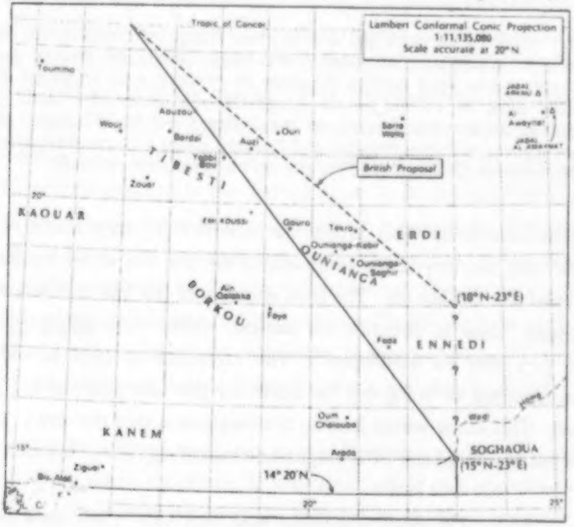
[54] Cambon-Delcassé Telegram, 15 March 1899, French Archives Annex, p. 37.

[55] Cambon-Delcassé Telegram, 19 March 1899, French Archives Annex, pp. 38-39.

Cambon's summary, since neither Ouadaï nor Darfour, which were to be separated by this segment of the line, extended north of approximately 15°N latitude. The text of the British draft of Article 3, according to Cambon, was as follows:

> "A partir du point où la ligne frontière rencontre le 18° parallèle, une autre ligne sera tracée dans la direction à peu près du nord-ouest jusqu'au point où le tropique du Cancer coupe le 16° degré de longitude de Greenwich. Jusqu'à nouvelle entente entre les deux Puissances, le Gouvernement britannique s'engage à n'acquérir ni territoire ni influence politique dans la région située immédiatement au sud-ouest de cette ligne, et le Gouvernement français s'engage à n'acquérir ni territoire ni influence politique dans la région située immédiatement au nord-est de cette ligne."[56]

Map No. 46



This had the effect of pushing recognition of the French sphere, and even "la ligne frontière", north to 18°N latitude, but beyond that the British formula of only mutual desistment remained the same. The British proposal has been drawn on Map No. 46 as a dashed line. Since it is unclear how the line was intended to proceed north of 15°N latitude, as indicated above, question marks have been placed between 15°N and 18°N on the map. Then a straight dashed line has been drawn from 18°N - 23°E to the intersection of 16°E longitude and the Tropic of Cancer. Also drawn on this map is a solid line from the point of intersection of 15°N latitude and 23°E longitude to the same intersection point on the Tropic of Cancer. As will be shown below, the solid line is the approximate line limiting the French zone that the negotiators ended up agreeing to.

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[56] Ibid., French Archives Annex, p. 30.

5.36 Cambon remarked at once to Salisbury that it was not possible to push the line of delimitation up to 18°N latitude: this would deprive France of territories it claimed north of Darfour[57]. He also opposed the reciprocity clause as an indirect recognition of British rights over the middle and upper Nile. After a long discussion, the following formulation gained Salisbury's support:

> "Il est entendu, en principe, que la zone française comprendra les territoires situés au sud-ouest d'une ligne qu'elle ne pourra pas dépasser; cette ligne partira du point de rencontre du tropique du Cancer avec le 16° degré de longitude est, descendra dans la direction du sud-est jusqu'à sa rencontre avec le 24° degré de longitude est et suivra ensuite ce 24° degré jusqu'à sa recontre avec la frontière du Darfour telle qu'elle sera ultérieurement fixée[58]."

This was quite close to the final, agreed text of Article 3, except that it recognised "in principle" that territory to the southwest of the line was within France's zone, which the final text did not do. The final segment of the line had become a line that descended "dans la direction du sud-est" rather than ascended "dans la direction à peu près du nord-ouest". The reference to 18°N latitude, which France had opposed as being too far north for the end point of the line, had disappeared. This alone would lead to the conclusion that the end point of the line was intended to intersect 24°E longitude considerably to the south of 18°N.

5.37 The final agreement was then only a few days away from signature. Delcassé, however, had a few changes to make, which he urgently communicated to Cambon on 20 March[59]. The final revision, accepted by Lord

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[57] Ibid.

[58] Ibid., French Archives Annex, pp. 39 and 41.

[59] Delcassé-Cambon Telegram, 20 March 1899, French Archives Annex, p. 42.

Salisbury, provided for the first segment of the line (Article 2) to end at 15°N latitude. Article 3 was revised, as follows, which is the final English text:

> "It is understood, in principle, that to the north of the 15th parallel the French zone shall be limited to the north-east and east by a line which shall start from the point of intersection of the Tropic of Cancer with the 16th degree of longitude east of Greenwich (13°40' east of Paris), shall run thence to the south-east until it meets the 24th degree of longitude east of Greenwich (21°40' east of Paris), and shall then follow the 24th degree until it meets, to the north of the 15th parallel of latitude, the frontier of Darfur as it shall eventually be fixed[60]."

(b) Certain Observations Concerning the Declaration's Final Text

5.38 In the light of the travaux on the French side, several conclusions may be drawn regarding the agreed text of the 1899 Declaration. The element of reciprocity was preserved only in respect to the southern sector - the line (below 15°N latitude) covered by Articles 1 and 2. This line was intended to be a "line of frontier", and the mission of the commissioners appointed pursuant to Article 4 to delimit the frontier-line was concerned only with the southern sector of the line set out in Article 2. In contrast, Article 3 dealt, not with a frontier, but with limitations to the "French zone" to the north of 15°N latitude. In fact, if the text set out in paragraph 5.36 above is compared with the final text (paragraph 5.37), it can be seen that even the explicit recognition that the territories to the southwest of the line fell within the French zone was dropped, reflecting, inter alia, the British concern not to ruffle the feathers of the Ottoman Empire (and Italy). The basic difference between Articles 1 and 2, which delimited a boundary, and Article 3, which did not, was clearly intended.

5.39 What, then, can be made of the words "in principle" ("en principe")? Once again, the words "in principle", which only appeared in the final drafts, would appear to have been an attempt to accommodate the Ottoman Empire's sensitivity. The words modify the limits of the French zone not the direction of the line described later on in the sentence.

5.40 As to the direction of the line, the English text, "to the south-east", arguably is less precise than if the phrase had been, for example: "thence south-east until it meets the 24th degree of longitude". In this regard, it will be recalled that Lord Salisbury's 19 March draft would have started the northern sector of the line at the point of intersection of the Ouadaï - Darfour boundary (which was to be delimited between 21° and 23°E longitude) and 18°N latitude[61]. Lord Salisbury's line was then to have been drawn "dans la direction à peu près du nord-ouest"; but Ambassador Cambon had strenuously objected to pushing the starting point that far to the north. As Map No. 46 shows, by starting the line at 15°N latitude, which must have been the French position, rather than at 18°N latitude, as Lord Salisbury had proposed, the resulting direction of the line is almost exactly northwest/southeast.

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[60] Annex to Cambon-Delcassé Dispatch, 21 March 1899, French Archives Annex, p. 46. See, also, International Accords and Agreements Annex, No. 4.

5.41 This appears to be confirmed by a document in the considerably less complete travaux contained in the Livre jaune covering the 1899 Declaration. The document is the British proposal of 19 March, the French text of which is set out in paragraph 5.35 above; but the starting point of the line in Article 3 of the French version of the document is 15°N latitude, not 18°N latitude[62]. It is not known what the basis for this alteration was. However, the hand-written version of the British proposal of 19 March found in the British archives shows the number 18° scratched out and 15° written in[63]; and Cambon informed Delcassé the following day that Salisbury had agreed to such a change[64]. It may reasonably be concluded, therefore, that Lord Salisbury had indeed agreed to make this change. Thus, the agreed line was to have been drawn from roughly the intersection of 23°E longitude and 15°N latitude, northwest to its terminal point on the Tropic of Cancer, which is the solid line appearing on Map No. 46, shown in contrast to Lord Salisbury's proposed line (the dashed line).

5.42 At the last moment of the negotiations, Lord Salisbury agreed to designating the end point of the line - whose direction had now become reversed in the final draft tabled by M. Cambon so that it descended in a southeast direction rather than ascended in a northwest direction - as being the intersection of such a line with 24°E instead of 23°E longitude[65]. Why he agreed to this is not apparent, for the boundary between Ouadaï and Darfour was to be delimited within the limits of 21° and 23°E longitude. The inconsistency apparently was perceived by the Quai d'Orsay and, in his final dispatch, Delcassé sought to widen the Ouadaï - Darfour boundary limits so as to extend to between 21° and 24°E longitude[66]. The final text reveals that such a change was not agreed, with the result that the end point of the second sector line would fail to meet the northern point of the first sector boundary, thus leaving a gap to be filled (Map No. 47). Nevertheless, it clearly emerges from the travaux that the direction of the southeast line was intended to be, and would inevitably result in being, almost an exact southeast line, for it was meant to intersect 24°E longitude at approximately 15°N latitude. Of course, the exact end point could not have been known at the time since the Ouadaï - Darfour delimitation (under Article 2) had yet to be accomplished, and in any event that part of the line could not go further east than 23°E longitude.

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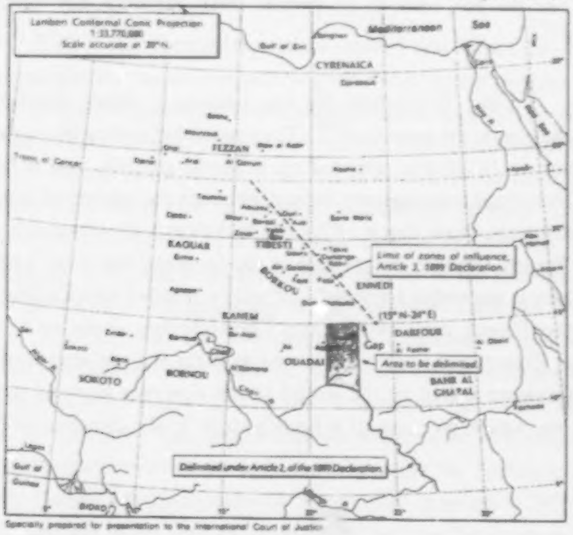
[61] Cambon-Delcassé Telegram, 19 March 1899, French Archives Annex, pp. 38-39.

[62] Dispatch from Cambon to Delcassé, 19 March 1899, as published in Livre jaune, French Archives Annex, p. 40.

[63] British Handwritten Proposal, 19 March 1899, FO 97/561, British Archives Annex, p. 35.

[64] Cambon-Delcassé Telegram, 20 March 1899, French Archives Annex, p. 43.

Map No. 47



Specially prepared for presentation to the International Court of Justice

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[65] Ibid., French Archives Annex, p. 44.

[66] Delcassé-Cambon Telegram, 20 March 1899, French Archives Annex, p. 42.

5.43 Other conclusions concerning the meaning and effect of the 1899 Declaration will be taken up below in the context of subsequent developments.

(c) The British Travaux

5.44 It is not necessary to make as complete an analysis of the 1899 negotiations as seen from the British side. For the British travaux largely confirm what the French record shows. Nevertheless, certain Foreign Office documents merit comment.

5.45 The British view as to the intended scope of Article 3, relating to the northern sector of the line, was quite different from that of the Quai d'Orsay. As pointed out in a Foreign Office note of Sir Thomas Sanderson, the British Ambassador in Paris, commenting on the Cambon draft of 9 March, Cambon's proposed Article 3 was objectionable to the British because, inter alia: "It contains a recognition that certain places fall within the French sphere, whereas we do not wish to go further than renounce any claim to them ourselves[67]."

5.46 The British file also contains a rather detailed comment dated 14 March on the same draft[68]. The proposal of ending the southern sector delimitation at 14°20' was opposed on technical grounds, and a point in the Abéché-Nyeri road was suggested instead, although the latitude of such a line was approximately the same, that is 14°20'. As to Article 3, the observation was made that the French demands in that part of the proposed line were "growing to an extent which is somewhat alarming". (It will be recalled that Cambon sought to expand the French zone beyond the Tibesti-Borkou oases so as to include Ouniaanga, Ennedi and Soghaoua, as well as other regions near Darfour.) The principal concern voiced by the British at the time was to avoid anything that might in the future give rise to a French claim in the direction of the Koufra oases.

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[67] Sir Thomas Sanderson's note of 11 March 1899, FO 97/561, British Archives Annex, p. 4.

[68] Letter from Sir William Everett to Sir Thomas Sanderson, 14 March 1899, FO 97/561, British Archives Annex, p. 23.

5.47 As already noted, the British draft of 19 March would have extended the end point of the first sector line from 14°20'N latitude (subsequently 15°N) northward to 18°N latitude, along a line lying between 21° and 23°E longitude. From there the second sector was to follow a line to be drawn "in a direction generally to the northwest as far as the Tropic of Cancer". But all the British proposals for the second sector were framed in terms of a mutual agreement of each party not to cross the line, without, however, any recognition of French rights to the west and southwest of such a line or of British rights to the east and northeast. The British proposals also contemplated the annexation of a map to the agreement, which as we have seen the French opposed and defeated. The British 19 March draft was modified so as to substitute 15°N latitude for 18°N and to describe the line running northward from there as drawn "dans la direction à peu près du nord-ouest jusqu'au point où la tropique du Cancer coupe le 16° degré de longitude"[69]. Even then - two days before final agreement - Article 3 of the British draft contained only an agreement by each State not to cross the line but accorded no recognition of any French rights to the west and southwest of such a line - not even of a French zone of influence.

5.48 The French negotiators drafted and introduced the three last-minute changes that have subsequently given rise to debate over the meaning of Article 3 of the Declaration. These changes were, first, the mention of a French "zone" to the southwest and west of the line. This was subsequently to be interpreted by France to mean that a territorial boundary had been agreed, a position with which the British Government consistently differed, maintaining that only the limits of a zone or sphere of influence were involved north of 15°N latitude. Second, there was a change in the direction of the line described in Article 3 - instead of a line ascending to the northwest from the first sector boundary at 15°N latitude, the line descended southeast to intersect 24°E longitude and then followed that line south to the first sector boundary at the, as yet undetermined, point where the first sector boundary met 24°E longitude to the north of 15°N latitude. The third change was to introduce 24°E longitude into the boundary formula even though, as to the first sector, the French proposal of extending the Ouadaï - Darfour sector to be delimited eastward to 24°N had not been agreed and was in the end not incorporated into the Declaration, resulting in a situation where the boundaries would not meet up (Map No. 47). Nevertheless, it seems clear that the end points of the limits of the two boundaries were intended to be very close, at least as to latitude, and that the switch in direction in describing the second sector line was not meant to bring about a major change in the direction of that line, which logically could only have been almost a true northwest/southeast line.

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[69] The English text read: "In a northwesterly direction as far as the point where the Tropic of Cancer intersects the 16th degree of longitude."

(d) Protests from the Ottoman Empire and Concern Voiced by Italy

5.49 As the foregoing account reveals, during the negotiations both Great Britain and France were keenly aware of the likelihood that the Ottoman Empire would regard the Declaration as an encroachment on the Ottoman Empire's claim to rights over the hinterland of Tripolitania. On the last day of negotiations, in proposing a revised text for Article 3, which became the finally agreed text, Cambon said this to Delcassé:

> "Il ne faut pas oublier que nous sommes exposés aux réclamations du Sultan et aux soupçons de l'Italie [footnote omitted]. Une disposition, assez précise pour nous assurer incontestablement les régions qui s'étendent entre le sud (de) la Tripolitaine et le Darfour, et assez vague pour nous permettre de décliner une conversation avec la Porte, me semble préférable à une énumeration ou à une mention de territoire[70]."

This policy of what can only be called deception was to characterize the subsequent actions of the French Government as to the Tripolitanian frontiers right up to the time of signing the 1955 Treaty with Libya.

5.50 As a result, any mention of the various regions to be included within the French zone was dropped. Nonetheless, the Turkish protest was not long in coming. At a diplomatic reception on 29 March 1899, the Turkish Ambassador handed Delcassé a note verbale reminding France of the Ottoman Empire's claims, of which France had been made aware in 1890[71]. Similar notes were presented in London, Tripoli, Berlin, Vienna, and St. Petersburg. French Ambassador Barrère in Rome also received word of Italy's concern[72], which was shortly thereafter strongly expressed by Italy's Foreign Minister Admiral

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[70] Cambon-Delcassé Telegram, 20 March 1899, French Archives Annex, p. 44.

[71] Delcassé to French Ambassadors in Rome and Constantinople, 1 April 1899, French Archives Annex, No. 48.

[72] Barrère-Delcassé Telegram, 2 April 1899, French Archives Annex, p. 49.

Canevaro[73]. France gave these expressions of Italian concern somewhat more attention than they gave to the formal protests of the Porte. Canevaro set about to try to obtain a joint declaration of Great Britain, France and Italy to allay Italy's fears, which were hardly assuaged by statements such as the following, contained in a dispatch from French Ambassador Barrère to Delcassé:

> "La région réservée à l'influence française faisait partie intégrante de l'hinterland de la région du Tchad et du Congo français, dont elle était le prolongement géographique et naturel[74]."

This was certainly to give the concept of hinterland an entirely different meaning than that commonly understood; for the hinterland was considered to embrace the territory lying landward of the coast of a country. Such a definition, however, posed problems for France, as Barrère no doubt was aware: for all of the territory over which France claimed a zone of influence under the 1899 Declaration lay landward of the Tripolitanian and Cyrenaican coasts, regions belonging to the Ottoman Empire.

5.51 What Admiral Canevaro sought from France and Great Britain was "une déclaration de désinteressement à l'égard des territoires ripolitains"[75]. The Quai d'Orsay, however, feared the repercussions of such a declaration, which would be tantamount to the recognition of or acquiescence in taly's ambitions with regard to Tripolitania. Nevertheless, Canevaro submitted everal draft proposals. These showed that Italy's main concern at the time was over Tripolitania proper and with freedom of trade along the caravan routes to he south toward Lake Chad[76].

5.52 Then, on 19 May 1899, the Turkish Ambassador to Paris ollowed up his initial protest with a note verbale addressed to French Foreign Minister Delcassé[77] in which he detailed the Ottoman Empire's position as to the Tripolitanian hinterland and repeated the reservations expressed earlier to

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[3] Delcassé-Barrère Dispatch, 5 April 1899, French Archives Annex, p. 50.

[4] Barrère-Delcassé Dispatch, 11 April, 1899, French Archives Annex, p. 53.

[5] See, "Note pour le Ministre", 12 April 1899, French Archives Annex, p. 55.

[6] See, the revised Italian draft note in Barrère-Delcassé Dispatch, 12 April 1899, Annex II, French Archives Annex, p. 59.

[7] Bey-Delcassé Letter, 19 May 1899, French Archives Annex, p. 61.

Delcassé on 29 March. The note showed signs of having been carefully prepared; and it would normally have been expected to receive a considered response from France. But France's reply of 6 June[78], discussed further on, was curt, as perhaps might have been expected in the light of Ambassador Cambon's letter to Delcassé of 20 March quoted from in paragraph 5.49 above.

5.53 Although the Turkish note deserves to be read in its entirety, certain of its main points are set out here:

- The Ottoman Empire's formal reservation of its territorial rights in Africa during the 1885 Congress of Berlin was recalled;

- It mentioned the exchange of notes between Great Britain and France on 5 August 1890, at the time the 1890 Convention was entered into, undertaking to respect scrupulously the rights of the Ottoman Empire, as well as Lord Salisbury's confirmatory statement to the House of Lords on 11 August 1890;

- Lord Salisbury's express recognition of France's "hinterland" rights over territory south of its Mediterranean possessions in this same statement to the House of Lords was quoted;

- The hinterland concept was discussed in legal terms with citations largely taken from French sources;

- This part of Central Africa was said not to be *res nullius* and, in any event, not subject to occupation pursuant to the General Act of Berlin;

- Certain elements contributing to the Ottoman claim of title were set out, and it was asked what the basis was of any

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[78] Annex to Delcassé-Constans Dispatch, 29 May 1899, French Archives Annex, p. 68. It is quite remarkable, in the light of this exchange, that on several subsequent occasions the Quai d'Orsay informed the British Foreign Office that the Ottoman Empire had never protested the 1899 Declaration; and when this was discovered to be untrue, the French described the Turkish protests as "platonic".

French or English claims of title over the territory or by what right they purported to dispose of it.

5.54 France's internal reaction to the Turkish note appears in a dispatch of 29 May 1899 from Delcassé to Constans, France's Ambassador in Constantinople[79]. In the dispatch, the hinterland doctrine was dismissed as not constituting a principle of international law but rather "un ensemble de considérations de fait, d'ordre géographique, politique, commercial ou autre, qui a paru propre à la constitution ou à faire présumer des droits". Delcassé said that in the circumstances the facts did not support treating the regions to the north and east of Lake Chad as "dépendant de la côte tripolitaine"[80]. The dispatch pointed out that France had expressed at the time strong reservations as to the 1890 Ottoman hinterland claim.

5.55 The basis of France's claim of title was expressed in this way, in the official reply to the Porte of 6 June 1899:

> "Ces régions, jusqu'à une époque récente , sont restées à l'état inorganiques, indépendantes de toute Puissance civilisée. Mais depuis un certain nombres d'années l'action de la France s'y est exercée progressivement, ses missions en ont parcouru la plus grande partie et y ont fait reconnaître sa suprématie; ses colonnes y protègent les caravanes et le commerce[81]."

As has been demonstrated in Part IV, at the time the French reply was delivered to the Porte, the three-pronged French advance toward Lake Chad was just reaching its destination. The regions with which the 1899 Declaration was concerned, north of 15°N latitude, were regions far to the east and north of Lake Chad, to which French forces would not arrive for another 10 years or more. This may help to excuse the ignorance of the area reflected in the French reply. The French soon learned to regard the Senoussi Order, which had organized the Senoussi tribes to oppose the French military advance into their lands, as very much a "Puissance" with which they had to deal. The Senoussi may not have absorbed French civilization (and hence not be in French eyes a "Puissance civilisée") but they had a rich heritage of Arab culture and were zealous Muslims with a loyal following among the indigenous tribes. As noted earlier, in the exchanges between the French and the Senoussi in 1911-1912, the Head of the Order demanded the return of 700 books taken by the French forces from their zawiyas[82], suggesting that they might have had a higher regard for "civilization" than the French forces attacking them, which consisted of only a handful of French officers, in any event. As for the suggestion that the French were providing protection for the caravan routes, this was, at the very least, disingenuous in the light of the concern expressed several months earlier by the Quai d'Orsay concerning a Turkish detachment that was engaged in pursuing Toubou marauders from the Tibesti who had been attacking caravans[83]. The French concern was over the fact that the detachment was preparing to establish a garrison at Bilma not over the protection of the caravan routes. In fact, the evidence shows that the Ottoman police action in question was precisely for the purpose of protecting the principal caravan route running through Bilma. In contrast, France's interest in the caravan routes was, not in their protection, but to divert them from Tripoli to Algiers and Tunis. Besides the Ottoman garrisons stationed in Fezzan, the other force at that time that arranged for the protection of the caravan routes was the Senoussi. Their zawiyas were often located at or near important oases along these routes. The French invasion of these regions had the effect of totally disrupting these historic north/south trading routes[84].

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[79] Delcassé-Constans Dispatch, 29 May 1899, French Archives Annex, p. 68.

[80] One can only wonder what special facts and circumstances, in contrast, justified considering the Algerian hinterland in 1890 as extending south to the Say-Barroua line. See, Maps Nos. 36 and 38 referred to in para. 5.08, et seq., above.

[81] Constans telegram, presented on 6 June 1899, which appears in the Annex to Délcassé-Constans Dispatch 29 May 1899, French Archives Annex, p. 69.

(e) The Effect of the 1899 Declaration

5.56 Under the principle res inter alios acta, the agreement between France and Great Britain could not have affected any rights of a third State without its consent or acquiescence, and this was pointed out by the Ottoman Empire in its vigorous protests. The Ottoman Empire was not the only

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[82] See, para. 4.158, above, and related fn.

[83] See, para. 5.14, above. See, also, Part IV generally, which demonstrates how totally at odds with the situation as it existed at the time was this statement in France's official reply.

[84] See, Wright, Libya, Chad and the Central Sahara, op. cit., p. 73. The British Government's reply to the Ottoman protest was to the effect that the 1899 Declaration only laid down certain limits to the acquisition of territory and political influence by the two contracting powers but did not deal with the question of existing rights. See, reference in note from Curzon to Saint-Aulaire, 21 August 1922, FO 371/7749, British Archives Annex, p. 160. The reply went on to say that any questions of that nature should be taken up by the Porte with the Power that might assume jurisdiction over territories claimed by the Porte, if and when that occasion should arise.

State to protest or express reservations. Germany also expressed an interest in the 1898 Convention and the 1899 Declaration. The German Ambassador in London addressed a note verbale to Lord Salisbury dated 3 May 1899 in which, referring to these recent agreements, he said that they were-

> "... regarded by the Imperial Government as unilateral Treaties only binding Great Britain and France. They cannot in any way or in any direction prejudice the rights of third parties and therefore of Germany[85]."

And he reserved on behalf of Germany the full maintenance of its rights and interests if affected by the agreements in question.

5.57 Lord Salisbury replied on 13 May inquiring in what way Germany considered its rights to be affected[86]. The German Ambassador replied on 16 July that his note-

> "... had solely the intention of making it clear that the Anglo-French Agreements ... must be looked upon as inter alios acta, and cannot therefore affect the position of Germany, and our already existing interests, or such interests as may grow up in the future[87]."

5.58 Another conclusion regarding the effect of the 1899 Declaration is that it was not, and was not intended to be, the delimitation of a boundary north of 15°N latitude. It was, in fact, only at the last moment that Great Britain accepted that any mention at all be made of a French "zone" to the southwest and west of the line north of 15°N latitude; and in the final text of Article 3 there appears no positive expression of recognition of any French "zone", but rather a negative statement limiting what is referred to as the French "zone" to the southwest and west of the line that was drawn southeast from the Tropic of Cancer.

5.59 The British Government certainly held such a view as to the limited scope and effect of the Declaration. In a dispatch of 13 May 1899 to Lord Currie, the British Ambassador in Rome, Lord Salisbury reported his conversation with the Italian Ambassador in London the day before, in which the latter had raised the question of the 1899 Declaration. According to Salisbury, the Italian Ambassador wished to know "whether we were willing to give any assurance as regards our future action in the Hinterland of Tripoli". Salisbury replied as follows:

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[85] Hatzfeldt-Salisbury, 3 May 1899, FO 741/343, British Archives Annex, p. 42.

[86] Salisbury-Hatzfeldt, 13 May 1899, FO 741/343, British Archives Annex, p. 43.

[87] Hatzfeldt-Salisbury, 16 July 1899, FO 741/343, British Archives Annex, p. 46.

> "Without inquiring how far we were at present in a position to discuss the future destination of a country or region whose ownership at present was not doubtful, I pointed out to him that the terms of the Anglo-French Agreement had been so arranged as to convey no statement on our part except one of a negative character. We simply stated that beyond a certain line south of the Tropic of Cancer we would not increase our dominion or influence westward. In this manner we avoided dealing in a positive sense with the future of Tripoli or its Hinterland.
>
> While, however, giving this explanation, I was not in a position to bind Her Majesty's Government by any assurances or engagement with regard to Tripoli[88]."

In a note verbale several years later (7 March 1902), Lord Currie informed the Italian Foreign Minister, Prinetti, that-

> "... the Agreement between Great Britain and France of the 21st March, 1899, laid down a line to the east and west of which respectively the two Signatory Powers bound themselves not to acquire territory or political influence in the regions traversed by the said line, but that the Agreement in no way purported to deal with the rights of other Powers, and that, in particular, as regards the Vilayet of Tripoli and the Mutessarifik of Benghazi, all such rights remain entirely unaffected by it[89]."

5.60 A similar explanation was given to the French Ambassador in London by Lord Sanderson on 4 April 1899. As summarized in a dispatch from Lord Curzon to the French Ambassador in London many years later (21 August 1922), Lord Sanderson had said -

> "... that the paragraph of the declaration of 21st March, 1899, which related to the territory north of 15°, was carefully worded in a negative sense, so that while it placed a limit on the eventual advance of France to the eastward and of Great Britain to the

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[88] Salisbury-Currie, 13 May 1899, FO 101/94, British Archives Annex, p. 45.

[89] Currie-Lansdowne, 15 March 1902, FO 170/587, to which this note is attached as "Enclosure 1 in No. 1", British Archives Annex, p. 80. This note was part of the 1902 Anglo-Italian Accord, which is dealt with below starting at para. 5.103.

> westward, it did not recognise or purport to pass judgment on any other rights or claims[90]."

Lord Sanderson had added that the clause in the Declaration providing for delimitation of the frontier line by commissioners did not apply to the portion of the line north of 15° and that-

> "... it had been arranged between Lord Salisbury and the French Ambassador that there should be no agreement or words implying agreement for the delimitation of the territory in question."

On the strength of these documents, Lord Curzon wrote to the French Ambassador:

> "You will, I think, agree that the above facts support the view that it was the intention of the 1899 declaration merely to lay down the limit of spheres by influence in the region in question and not to define a frontier up to which the sovereignty of the two Powers should extend[91]."

5.61 Thus, quite aside from the principle of res inter alios acta, the 1899 Declaration was not intended to delimit a boundary north of 15°N latitude and did not do so. In fact, Italian Foreign Minister Canevaro expressed the view in February 1902 that so long as the 1899 Declaration affected only regions south of 15°N latitude it was of no concern to Italy; but should it extend north of that parallel, so as to include part of the hinterland of Tripoli, the status quo in the Mediterranean, which was of prime importance to Italy, would thereupon be affected. Canevaro was reassured on this point by the British Ambassador who pointed out the limited effect of the 1899 Declaration[92].

5.62 In sum, the 1899 Declaration cannot be regarded as having delimited an international frontier of any kind north of 15°N latitude. Article 3 of the Declaration had been worded in a negative way in order to prevent France from acquiring territory or extending its sphere of influence to the northeast and east of the line. It contained no recognition of the rights of either France or Great Britain. In any event it was res inter alios acta, as Germany had noted. Finally, protests were made by the Ottoman Empire to Article 3, Germany expressed reservations, and Italy voiced concern but received reassurances from the British.

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[90] Curzon-Saint-Aulaire, 21 August 1922, FO 371/7749, British Archives Annex, p. 160.

[91] Ibid. Lord Curzon's note related to the difficulties France and Great Britain were having in 1921 and 1922 reconciling their quite different positions concerning the effect of the 1899 Declaration and the subsequent Anglo-French Convention of 8 September 1919 in reply to Italy's protest against the 1919 Convention, a story that will be discussed below in the context of the 1919 Convention. See, para. 5.192, et seq., below.

[92] See, Lansdowne-Currie Dispatch, 3 February 1902, FO 101/94, British Archives Annex, p. 73.

SECTION 5. The 1900-1902 Secret Franco-Italian Accords

5.63 In November 1899, discussions got underway between France and Italy that ultimately led to two agreements concerning Tripolitania. Italy sought France's agreement to having a free hand to pursue Italy's interests in Tripolitania. France was only prepared to respect earlier assurances that France's colonial expansion did not extend to Tripolitania and Cyrenaica and that France had no intention of cutting the caravan routes linking Tripolitania and Cyrenaica with the south[93]. In return, France wanted "une clause de désintéressement à l'égard du Maroc"[94]. As to the form of such an agreement, Barrère expressed this view:

> "Je serais donc d'avis, en dernière analyse, de répondre au désir de M. Visconti[95] tout en laissant, par la forme de notre déclaration, la possibilité de nous délier au cas où la politique italienne reprendrait un caractère hostile à la France."

5.64 The negotiations between France and Italy, conducted in Rome by Barrère and Visconti-Venosta, were long and arduous, culminating in a secret exchange of letters dated 14 and 16 December 1900[96]. This 1900 Accord, together with the secret 1902 Accord, have been described by France on a number of occasions as the "texte de base" governing the boundary question between Libya and the French possessions to its south[97]. Accordingly, these texts and the travaux leading up to them require close study.

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[93] See, Barrère-Delcassé, 3 November 1899, annexed to Barrère-Delcassé, Dispatch, 11 November 1899, French Archives Annex, p. 72.

[94] Note of Barrère, 17 January 1900, summarizing meeting several days earlier with Visconti-Venosta, French Archives Annex, p. 74.

[95] A reference to Marquis Visconti-Venosta, Italian Minister of Foreign Affairs.

[96] The text of these letters appears as enclosures to Barrère-Delcassé Dispatch, 10 January 1901, French Archives Annex, pp. 91-92.

[97] See, e.g., para. 5.205, below.

5.65 Certain matters quite unrelated to boundary questions were having an influence on the actions of France and Italy at the time. The Triple Alliance was coming up for renewal in 1902. One of the clauses in an annex to this secret Treaty would have made any occupation of Tripolitania by France a *casus belli*. Thus, for France to give assurances to Italy that it had no designs on this territory would eliminate one of the principal reasons Italy had to renew the alliance, which France preferred that Italy not do. The other major concern of France was to obtain a free hand in Morocco. Italy, on the other hand, sought more from France: "non seulement notre *désistement*, mais notre approbation à une action ultérieure sur Tripoli[98]". This was asking for too much; France was willing only to make an "arrangement négatif qui exclut notre reconnaissance des visées italiennes sur Tripoli[99]". Moreover, the form of the agreement itself took on special significance because of its sensitivity not only in the light of the impending renewal of the Triple Alliance but also because Tripolitania was part of the Ottoman Empire[100].

5.66 These particular circumstances illustrate a general theme that runs all through the story of the background of this dispute. When the matter of the boundary has been raised it has been only as a minor adjustment of some major problem that was more pressing at the time. In 1899, the urgent matter was to put an end to the Fachoda crisis. In 1900-1902, it was to offset the Triple Alliance. As will be seen below, in 1935, Italy had its eyes on Ethiopia, as well as problems to resolve in Tunisia, and was prepared to make large territorial concessions elsewhere in order to get France's commitment to support (or at least not oppose) Italy as regards Italian ambitions with respect to Ethiopia. Ratifications of the 1935 Treaty of Rome were never exchanged because France failed to provide the *quid pro quo* it had offered. Similarly, the overriding and urgent problem to be resolved in the 1955 Treaty between Libya and France was to secure the evacuation of French forces from Fezzan. As a condition of evacuation, Libya was forced to rectify its western boundary with Algeria.

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[98] Barrère-Delcassé Private Letter ("Lettre Privée"), 9 May 1900, summarizing a meeting between Barrère and Visconti-Venosta on 14 May 1900, *French Archives Annex*, p. 77.

[99] Annex to the Barrère-Delcassé Private Letter of 9 May 1900.

[100] *Ibid*., *French Archives Annex*, p. 80.

(a) The 1900 Secret Accord and the Travaux

5.67 The letters that comprise the 1900 Accord came about as a result of Italy's request for a more explicit clarification concerning the implications of the 1899 Declaration than had been contained in the earlier oral reassurances given to Italy by France. On that point, Barrère's letter of 14 December advised Visconti-Venosta-

> "... que la Convention du 21 mars 1899, [i.e., the 1899 Declaration] en laissant en dehors du partage d'influence qu'elle sanctionne le vilayet de Tripoli, marque pour la sphère d'influence française, par rapport à la Tripolitaine-Cyrénaïque, une limite que le Gouvernement de la République n'a pas l'intention de dépasser, et qu'il n'entre pas dans ses projets d'intercepter les communications caravanières de Tripoli vers les régions visées par la susdite convention[101]."

5.68 In his letter of 16 December, which completed the exchange, Visconti-Venosta made no reference to this explanation of the 1899 Declaration set out in Barrère's letter[102]. Thus, the part of the Accord dealing with the effect of the 1899 Declaration as to Tripolitania consisted entirely of a unilateral statement on behalf of France; but it was a clear commitment by France to Italy not to go beyond the limits set in the Declaration, while in no way constituting a recognition by Italy of the Anglo-French Declaration.

5.69 Visconti-Venosta's letter dealt with France's interests in Morocco and Italy's interests in Tripolitania, in effect giving France a free hand in Morocco and stating his understanding that, if the situation in Morocco should be altered, Italy would have the reciprocal right "de développer éventuellement son influence par rapport à la Tripolitaine-Cyrénaïque". This, as will be seen below, fell short of Italy's aim to be recognised as heir apparent to the Ottoman Empire's rights over Tripolitania; even the reciprocal arrangement was unbalanced in France's favour, since Italy's rights with respect to Tripolitania arose only if the Moroccan situation was altered in France's favour. Indeed, the statement of Visconti-Venosta itself was unilateral and self-serving, for the Barrère letter gave Italy no such assurances on behalf of France. The Italian Foreign Minister merely set out his understanding in what was, aside from being secret, a very guarded, discreet exchange that avoided any bilateral commitment. This was well suited to the circumstances; for Italy had no right or title to the Libyan territory and peoples of Tripolitania and Cyrenaica. The only interested parties having rights and title were the Ottomans and the indigenous peoples.

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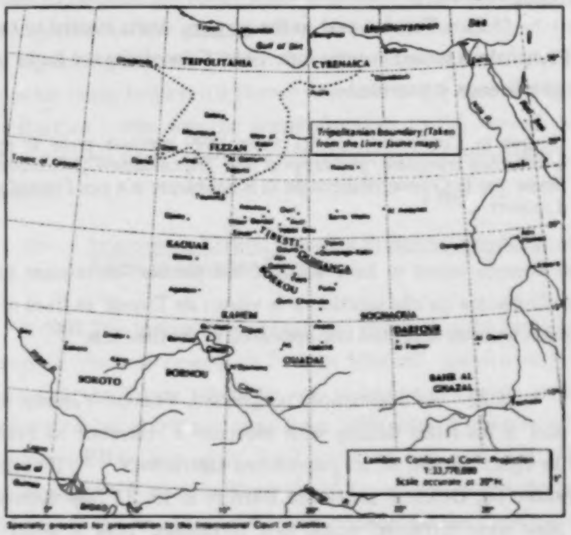
[101] The secret exchange of letters is attached as International Accords and Agreements Annex, No. 5.

[102] Ibid.

Map No. 44



Specially prepared for presentation to the International Court of Justice

5.70 Barrère's clarification of the 1899 Declaration in the passage of his 14 December letter quoted above has several interesting aspects. It describes the Declaration as concerning a division of spheres of influence and makes no claim that a territorial boundary delimitation of any kind was involved. The main thrust of Barrère's letter was to explain that the vilayet of Tripoli lay outside the Anglo-French division of spheres of influence and to declare that France had no intention of encroaching on Tripolitania - Cyrenaica. It is evident that Italy had two principal concerns. The first was to be reassured that the Declaration's failure to mention Tripolitania in dividing up spheres of influence meant that this region lay outside, not within, France's sphere of influence. The second concern was the identification of the western and southern boundaries of Tripolitania. These boundaries are illustrated on Map No. 44 as a wavy, dotted line, running from Ghadamès to the point where that line intersected the Tropic of Cancer at about 16°E longitude[103]. This is how this boundary was portrayed on the map included with the text of the 1899 Declaration published by France in the *Livre jaune*[104]. But these boundaries had never been fixed and, thus, the line shown on this map had never been established by agreement. The Barrère letter of 14 December dealt with the *first* concern; but the *second* concern remained to be addressed in the 1902 exchange of letters.

5.71 Turning next to the *travaux*, drafts started to be exchanged, with a French draft tabled in early June 1900. Concerning the limits to the French sphere of influence, it provided-

> "... que la Convention du 21 mars 1899 marque pour la sphère d'influence française, par rapport à la Tripolitaine-Cyrénaïque, une limite que le Gouvernement de la République n'a pas l'intention de depasser ...[105]."

Visconti-Venosta asked to have inserted the phrase "en laissant en dehors du partage d'influence qu'elle sanctionne le vilayet de Tripoli" in front of "marque", a clarification that was accepted and appeared in the final text[106].

5.72 As negotiations progressed, Visconti-Venosta sought to add to the part of his letter dealing with Morocco a reference to France's aim to protect its rights "au sud de ses possessions algériennes"[107]. If such an addition were insisted on, Delcassé instructed Barrère in his 13 July dispatch, then the words "pour notre territoire" would have to replace "pour le sphère d'influence française"[108]. However, Italy did not insist on this change, and the matter was dropped. This suggests that Delcassé was attempting to seize the opportunity to upgrade the effect of Article 3 of the 1899 Declaration from limits as to zones of influence to a territorial boundary, and to gain Italy's consent. He failed.

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[103] *Map No. 44* has already appeared above in connection with para. 5.26.

[104] *See*, *Map No. 40*, referred to in paragraph 5.16, above (the boundary line is shown there as a dashed rather than a dotted line).

[105] Annex I to Barrère-Delcassé Private Letter, 9 June 1900, *French Archives Annex*, p. 85.

[106] *Ibid*.

[107] *Ibid*., Annex III, fn. 1, *French Archives Annex*, p. 86.

[108] Delcassé-Barrère Telegram, 13 July 1900, *French Archives Annex*, p. 88.

5.73 One document, prepared after the 1900 Accord had been signed, has an important bearing on its scope and meaning. It is a dispatch to Delcassé of 10 January 1901, shortly after the 1900 Accord had been reached, in which Ambassador Barrère summarized its background and effect[109]. In the light of later claims by France as to the meaning of this agreement, it is noteworthy that this summary contained not the slightest hint that in the Accord Italy either had abandoned any future claim over the Tripolitanian hinterland or had given recognition to the southeast line set out in Article 3 of the 1899 Declaration, arguments that the French Government would later advance. If such a recognition really had been a French objective at the time of negotiation, Ambassador Barrère - who was the actual signatory to the Accord, let it be recalled - would surely have mentioned this point, even emphazised it, in his detailed summary.

(b) Intervening Events: Ottoman Protests; Occupation of Bilma by Ottoman Troops

5.74 The Italian Government had changed in the meantime; and Prinetti succeeded Visconti-Venosta as Foreign Minister. Barrère stayed on as French Ambassador in Rome, where he was to remain for many more years. Prinetti wanted to make public the part of the 1900 Accord concerning Tripoli. Barrère felt this would be imprudent, for Tripolitania was part of the Ottoman Empire; but he suggested that the Porte could be advised of the Accord on a confidential basis. In the meantime, it became evident that the Porte had learned of some kind of Franco-Italian agreement concerning Tripoli anyway.

5.75 A compromise solution was arrived at: Prinetti would make a statement to the Italian Parliament, the gist of which would be to summarize the text of Barrère's letter of 16 December 1900. The text of Prinetti's statement, delivered to the Italian Parliament on 14 December 1901, is set out in a dispatch to Delcassé of 3 December 1901[110]. This statement is significant in that it reveals that what Italy and France had been discussing related to the eastern limits of France's African possessions in relation to the vilayet of Tripoli[111]. These limits concerned only the area of the boundary between Ghadamès and Toummo, for beyond Toummo the boundary of the vilayet of Tripoli no longer lay east of any area of zone of influence claimed by France but, rather, to its north or west (Map No. 44). The Quai d'Orsay had cleared Prinetti's speech before it was given.

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[109] Barrère-Delcassé Dispatch, 10 January 1901, French Archives Annex, p. 89.

[110] Barrère-Delcassé Dispatch, 3 December 1901, to which the draft statement is annexed, French Archives Annex, p. 93.

[111] The phrase Prinetti used in his speech was: "en ce qui concerne la région contiguë à la frontière orientale de ses possessions africaines, et précisément la vilayet de Tripoli."

5.76 Aside from the Triple Alliance, up for renewal in mid-1902, several events involving the Ottoman Empire overshadowed the continuing discussions between France and Italy: the Ottoman Empire had started to register protests again; and Turkish troops had occupied Bilma.

5.77 The Porte took over three years to respond to France's rather cursory reply of 5 June 1899 to its detailed note verbale of 19 May 1899, referred to above. It came in the form of an extensive memorandum attached to a note dated 12 March 1902 from the Turkish Ambassador in Paris to Delcassé[112]. If the French reply to the earlier letter was cursory, Delcassé's reply to this note and attached memorandum was virtually to ignore it as containing nothing new. The following are the principal points contained in the Turkish memorandum:

- Once again, the reservations concerning the hinterland claims of the Ottoman Empire made in 1885 during the Berlin Congress were recalled, as well as the subsequent Anglo-French Convention of 1890 that encroached on these claims, notwithstanding the simultaneous declarations of Great Britain and France to respect the integrity of the Ottoman Empire;
- The memorandum quoted Lord Salisbury as describing the 1890 Declaration as being concerned with the Algerian "hinterland", and a similar reference by French Foreign Minister Hanotaux was also cited;
- The document challenged the inconsistency of France's claim of a hinterland for Algeria in 1890 while in the 1899 Declaration refusing to recognize any hinterland for Tripolitania;

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[112] See, Memorandum included with Bey-Délcassé letter of 12 March 1902, French Archives Annex, p. 95, et seq.

- It referred to France's description, in its reply of 5 June 1899, of the regions as "inorganique et barbare" and cited views to the opposite effect, including those of Hanotaux, former French Foreign Minister, who had reported the findings of Stanley and of the German explorer, Barth, showing that the regions were not terra nullius;

- The memorandum went on to attack the French argument that France was entitled to swallow up the Tripolitania hinterland in order to assure order and tranquility in regions adjoining its own possessions[113];

- It pointed out that the Porte had never been concerned over France's intentions with regard to Tripolitania proper but only as to the Tripolitanian hinterland[114], as the Porte's earlier protests had made clear, asserting that the promises to respect the Ottoman Empire's integrity applied to these hinterland rights as well;

- It asserted that France had negotiated the 1899 Declaration with Great Britain, rather than with the real party in interest, the Ottoman Empire, and that France had failed even to observe the notice requirements of Article 34 of the General Act of Berlin[115];

- The memorandum asserted that the Ottoman Empire's sovereign rights were based in part on the caravan traffic from Tripolitania into the interior, which was of an ancient origin;

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[113] This point brings out the fact that the aim of France was a defensive, military one: to protect its interests around Lake Chad, not to settle in the region.

[114] The memorandum quotes Hanotaux's description of a delimitation of zones of influence as a "sorte d'annexion sur le papier qu'une diplomatie persévérante cultive ensuite comme des germes de réclamations et de titres pour l'avenir".

[115] As noted above in para. 5.07, however, Article 34 of the General Act did not apply since it concerned only taking possession of land on the coasts of the African Continent.

Once more, the Ottoman Empire reserved its rights.

5.78 France was more worried, however, over current Turkish activities than over this memorandum. On 30 November 1901, the French Ambassador sent a note to the Porte reporting that information had been received that an Ottoman detachment of one officer and 40 gendarmes had recently left for Bilma, described as "située au centre même de la zone réservée à la France"[116]. Of course, the French Ambassador meant "réservée" as between England and France in the 1890 Declaration, as part of the Algerian hinterland, although it is noted that Bilma lay almost due south of Tripolitania rather than Algeria (see, Map No. 44 referred to in paragraph 5.70). It also was a main stopping point on the main caravan route from Tripoli and Mourzouk to Kaouar and Lake Chad. France called for the immediate removal of the Turkish contingent.

5.79 In the meantime, the Porte's note and memorandum of 12 March 1902 had been received by the French Government, but there had been no direct response to France's earlier note concerning Bilma. Ambassador Constans, in a dispatch to Delcassé of 6 April 1902, suggested that the 12 March memorandum contained nothing new and proposed-

> "... que ce sujet est épuisé et qu'il n'y a pas lieu de notre part à nous prêter à un nouvel échange de déclarations écrites relativement à cette question[117]."

Constans suggested that the Bilma incident was a last-ditch attempt of the Porte to reopen the debate with France and to challenge French "rights". The best thing for France to do, he counselled, was to shut the door on any future discussion of the matter. Delcassé accepted this advice, and France never made a formal reply to the Porte's comprehensive memorandum of 12 March[118].

5.80 Nevertheless, the Bilma matter lingered on in spite of France's written and oral objections. On 9 May 1902, Constans informed Delcassé that the Ottoman Foreign Minister had told him that no Ottoman troops were at Bilma; but Constans said that information received from a "source absolument certaine" confirmed that Bilma had been occupied by the Ottomans and that recent instructions had gone out from the Porte to redouble their vigilance against French action there. The Porte, according to this unidentified source, was also considering a plan-

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[116] See, French Dispatch of 24 March 1902 to which a copy of the note of 30 November 1901 is attached as Annex 2, French Archives Annex, p. 102.

[117] Constans-Delcassé Dispatch, 6 April 1902, French Archives Annex, p. 109.

[118] See, Delcassé-Constans Dispatch, 5 May 1902, French Archives Annex, p. 111.

> "... de saisir la conférence de La Haye du règlement de cette affaire[119]."

It was reported that the Porte was considering the idea of sending to other governments a circular setting out the basis for the Ottoman claims. Constans advised that the Porte had sought Germany's support to prevent Italy from bringing about any change in the status quo in the Mediterranean.

5.81 Apparently France was not being told the full story about Bilma: the Ottoman Ambassador to Paris had admitted the occupation of Bilma by Ottoman troops; the Foreign Minister had denied it[120]. Then, on 24 December 1902, over a year after France had first become aware of the planned occupation of Bilma by the Turks, the French Minister of Colonies (M. Doumergue) wrote Delcassé reporting information that the Porte intended shortly to submit -

> "... un projet de délimitation de ce qu'elle appelle l''hinterland tripolitania', et dans lequel se trouverait englobé Bilma[121]."

M. Doumergue cautioned against appearing to accept any notion that possession of Bilma would fall to the first to occupy it, since Bilma lay in the "zone d'influence [française]".

5.82 Aside from the activities of the Ottoman Empire, France's other main preoccupation concerned the Triple Alliance and the question of Italy's renewal of its membership in it. In May 1902, Italy told France that renewal of the membership had, in principle, been decided[122]. It was this situation that overshadowed the form and contents of the 1902 exchange of letters.

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[119] Constans-Delcassé Telegram, 9 May 1902, French Archives Annex, p. 113.

[120] Constans-Delcassé Telegram, 17 June 1902, French Archives Annex, p. 118.

[121] Doumergue-Delcassé Dispatch, 24 December 1902, French Archives Annex, pp. 131-132.

[122] Barrère-Delcassé Telegrams, 8 May 1902, French Archives Annex, p. 112.

(c) The 1902 Secret Accord and the Preliminary Travaux

5.83 The 1902 Accord consisted of letters, initially dated 10 July 1902, from Prinetti to Barrère and from Barrère to Prinetti, together with a further exchange on 11 July to clarify one point in the 10 July letters[123]. The final texts will be examined first; then the travaux will be turned to for indications as to how the final texts evolved.

5.84 The 1902 exchange of letters was broader in scope than the 1900 Accord. Both letters began with a reference to the reciprocal interests of Italy and France in the Mediterranean basin, and in particular to their respective interests in Morocco and Tripolitania-Cyrenaica. In this context, the letters stated that it appeared appropriate to "préciser les engagements" resulting from the 1900 exchange of letters in order to make clear that each Power could freely develop its sphere of influence in these regions whenever deemed appropriate and without the action of one being subordinated to the action of the other. Thus, the unequal treatment accorded Italy in the 1900 Accord was rectified. Then came the sentence that subsequently became the cornerstone of France's position on the boundary question between Libya and France's African possessions to the south. It read as follows:

> "Il a été expliqué à cette occasion[124] que, par la limite de l'expansion française en Afrique septentrionale, visée dans la lettre précitée de Votre Excellence[125] du 14 décembre 1900, on entend bien la frontière de la Tripolitaine indiquée par la carte annexée à la déclaration du 21 mars 1899, additionnelle à la Convention franco-anglaise du 14 juin 1898[126]."

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[123] Prinetti-Barrère secret exchange of letters of 10-11 July 1902, attached to a Barrère-Delcassé Dispatch, 10 July 1910, French Archives Annex, pp. 126-130.

[124] Referring to the exchange of letters between Barrère and Visconti-Venosta of 14 and 16 December 1900.

[125] Referring to Barrère.

[126] Prinetti-Barrère secret exchange of letters of 10-11 July 1902, op. cit., French Archives Annex, pp. 126-130.

5.85 What strikes the eye at once is the reference to a map annexed to the 1899 Declaration. As has been seen, no map of any sort had either been referred to in the text of the Declaration or annexed. Although Great Britain had proposed that this be done, France had opposed it, largely in order to avoid any appearance of recognition of Great Britain's position in Egypt, but also because the negotiators had had difficulty in agreeing on a map. Thus was launched the strange story of the 1899 Declaration map, a mystery that has hung over the history of this boundary dispute from its first mention in 1902 until the present time. Repeatedly, France incorrectly informed Great Britain and Italy (and subsequently the United Nations General Assembly) over this period that a map had been so annexed; and on several separate occasions the British Foreign Office attempted to unravel the mystery - for it could find no map attached to its own original copy of the 1899 Declaration - as did the Italian Foreign Ministry. These episodes will be described in due course. In a history that is full of interesting and unusual incidents, the 1899 Declaration map episode is perhaps the most remarkable. If this Memorial were a detective novel rather than a pleading, it could well be titled "The Case of the Missing Map".

5.86 To resume the examination of the rest of the text of Prinetti's letter before returning to the travaux and to the map, Prinetti went on to say in his letter constituting part of the 1902 exchanges:

> "Nous avons constaté que cette interprétation ne laissait subsister actuellement entre nos Gouvernements aucune divergence sur les intérêts respectifs dans la Méditérranée."

The remainder of his letter contained undertakings by Italy of neutrality in the event of aggression against France, and related provisions bearing on their relations in the event of war, matters that related to the situation of the Triple Alliance and are not germane to the boundary dispute here.

5.87 Unlike the 1900 exchange of letters, the 1902 exchange took a bilateral form, and the text of one letter was largely repeated in the other. In particular, the sentence of Prinetti's letter quoted above in paragraph 5.84 was again repeated in the letter of Barrère, modified only to fit the context.

5.88 Analysis of the travaux starts with a draft dated 24 May 1902, apparently worked out jointly by Barrère and Prinetti, in the form of a bilateral declaration[127]. The key sentence quoted in paragraph 5.84 above referring to the Tripolitanian frontiers, which appears in the final text, was not included in the 24 May draft; nor was there any reference to a map.

5.89 The Quai d'Orsay generally accepted the contents of the draft. Delcassé expressed particular interest in Prinetti's assurance that the new treaty renewing the Triple Alliance contained no clause aimed at France or that threatened its security[128]. In a dispatch of 18 June to Barrère, Delcassé urged the resumption of negotiations with Prinetti as soon as possible, pointing out that the main point had to do with the mutual undertakings of strict neutrality[129]. He suggested that the duration of the Accord should coincide with that of the Triple Alliance, further underscoring France's primary objective of offsetting the Triple Alliance by this agreement with Italy. Subsequent Quai d'Orsay comments reveal that the concession to Italy concerning Tripolitania was linked in France's mind to Italy's observing the other provisions concerning neutrality. Certainly nothing in the dispatch suggests that France had in mind securing Italy's agreement to some sort of boundary.

5.90 The matter of the form that the Accord should take was important to Italy. The King strongly objected to a bilateral treaty; so Prinetti proposed an exchange of letters. The matter of the date of signature also became a sensitive issue since the Triple Alliance was just being renewed. For its part, France wanted the Accord to have a five-year term to be renewable to coincide more or less with renewal of the Triple Alliance.

5.91 Then, on 22 June 1902, Prinetti made a suggestion for an addition to the draft:

> "M. Prinetti a demandé qu'il soit mentionné que les frontières de nos possessions africaines du côté de Tripoli sont celles indiquées par la carte annexée à la convention anglo-française de 1898 ...[130]."

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[127] "Projet de Déclaration Bilatérale".

[128] Delcassé-Legrand Telegram, 30 May 1902, French Archives Annex, p. 116.

[129] Delcassé-Barrère Telegram, 18 June 1902, French Archives Annex, p. 119.

[130] Barrère-Delcassé Telegram, 22 June 1902, French Archives Annex, p. 121.

This was an Italian not a French proposal. Barrère's reaction was: "aucune difficulté". Now it is noted that Prinetti had referred to the map annexed to the 1898 Convention, not the 1899 Declaration; and indeed two maps had been annexed to the former[131]. The text of the sentence suggested by Prinetti was changed in discussions between Prinetti and Barrère so as to refer to a map annexed to the 1899 Declaration rather than to the 1898 Convention[132]. This was the final formulation of this provision of the Accord.

5.92 There is nothing in the French dispatches at the time to indicate that either party considered that by this sentence Italy had in any sense accepted or even considered the southeast line referred to in Article 3 of the 1899 Declaration. Neither was there any suggestion of renunciation by Italy of any Ottoman Empire *hinterland* rights that it might inherit in the future. The key sentence was added *at Italy's request*. As mentioned above in paragraph 5.70, Italy had *two* concerns over the meaning of the 1899 Declaration that it wanted clarified. Only the *first* concern had ultimately been dealt with in the 1900 exchange; the *second* problem, which related to the identification of the boundaries of Tripolitania, still remained to be addressed.

5.93 *Map No. 48* is a reproduction of the map that France attached to the version of the 1899 Declaration published by France in the *Livre jaune*[133]. The sentence added at the request of Prinetti refers to "la frontière de la Tripolitaine indiquée par la carte annexée (to the 1899 Declaration)"; and on the basis of the *Livre jaune* version of the Declaration and annexed map it would naturally be presumed that the map found there (*Map No. 40*) had in fact been annexed to the Declaration. Documents uncovered so far from the French, British and Italian archives do not reveal what, if any, map was in fact shown by the French to Visconti-Venosta in 1900 or to Prinetti in 1902. Indeed, there is evidence that Prinetti had not seen any map when he signed the 10 July 1902 letter. Italian documents reveal that on 18 July 1902 the Italian Ministry of Foreign Affairs (Colonial Office) had sent a map to the Army Headquarters asking that the borders of Tripolitania be traced thereon. The Army

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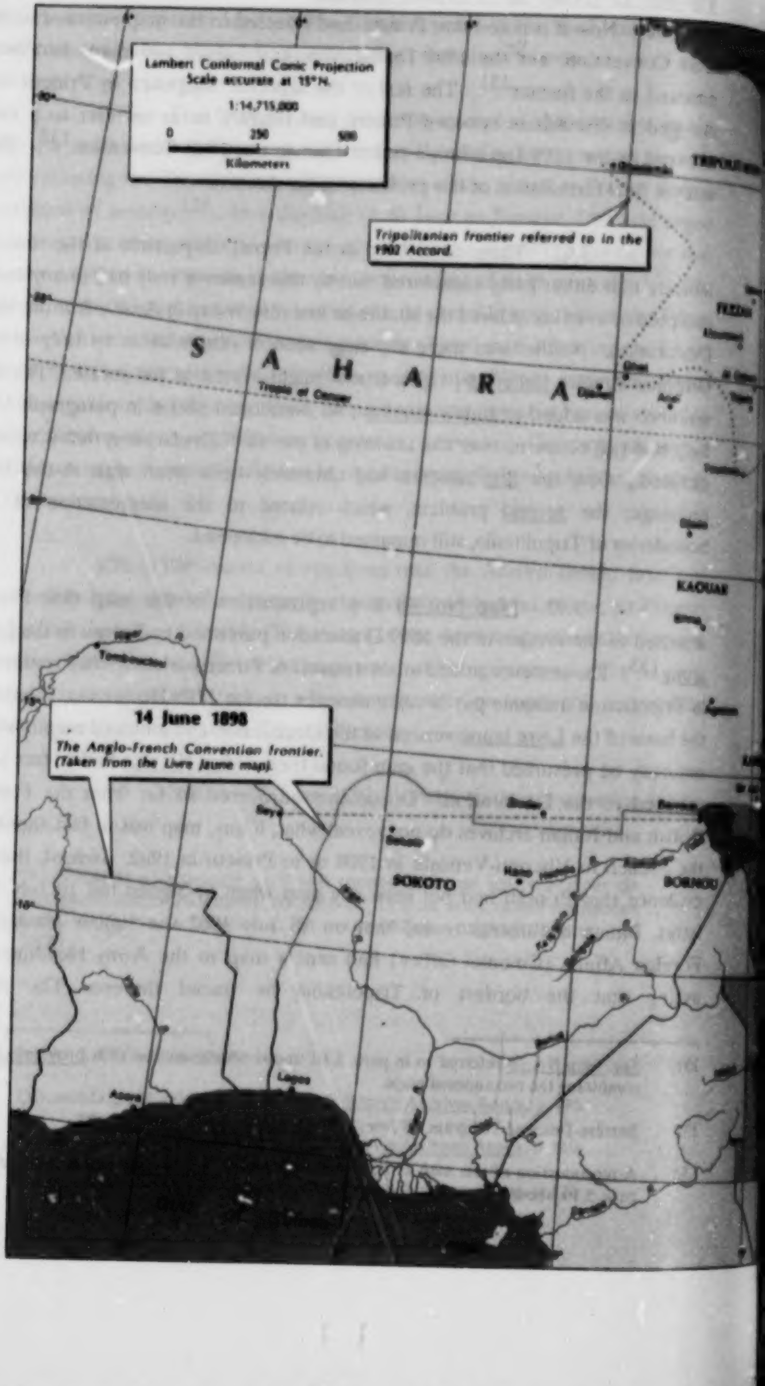
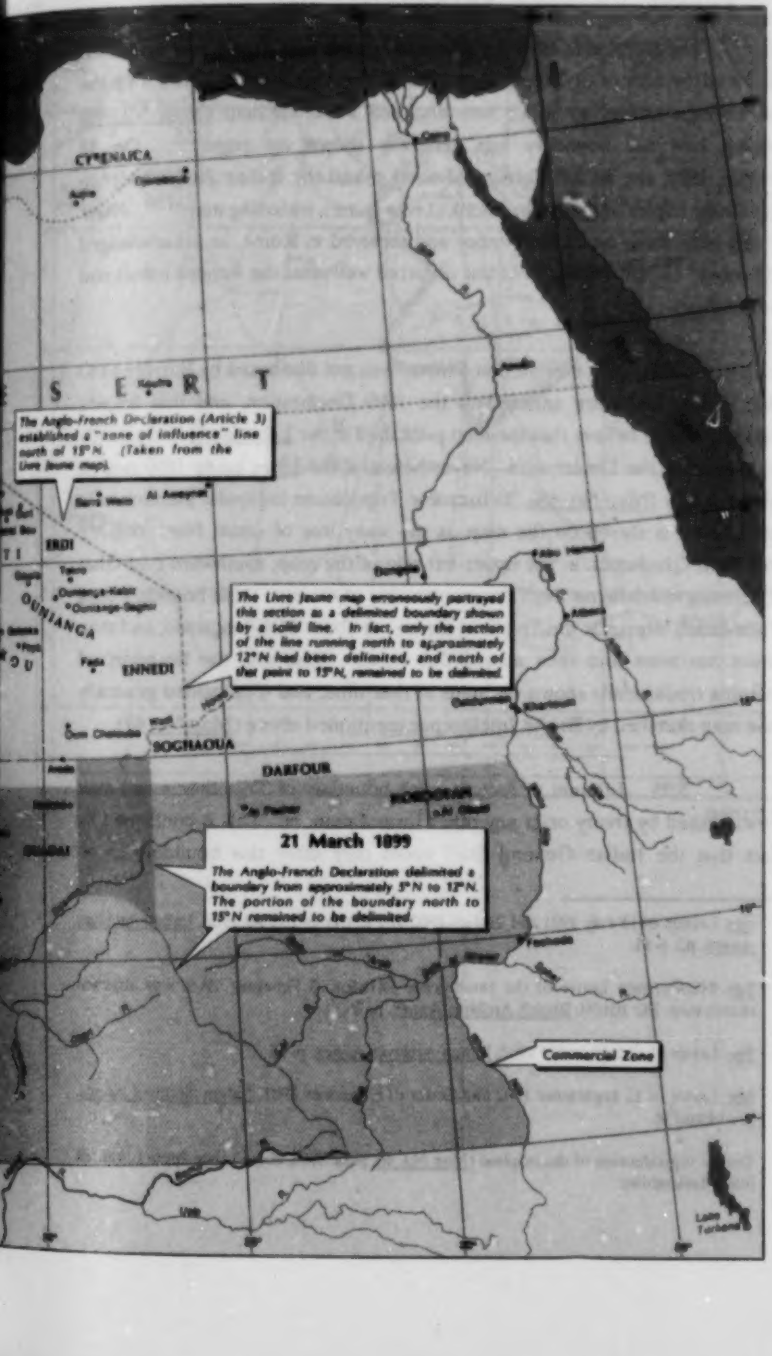
[131] *See*, *Map No. 39* referred to in para. 5.16, above, which was the 1898 *Livre jaune* map combining the two annexed maps.

[132] Barrère-Delcassé Telegram, 28 June 1902, *French Archives Annex*, p. 122.

[133] A reproduction of this map as published appears as *Map No. 40*, and is referred to in para. 5.16, above.


Lambert Conformal Conic Projection
Scale accurate at 15°N.
1:14,715,000
0
250
500
Kilometers
Tripolitanian frontier referred to in the 1902 Accord.
S A H A R A
Tropic of Cancer
FEZZAN
KAOUAR
Niger
Tombouctou
14 June 1898
The Anglo-French Convention frontier. (Taken from the Livre Jaune map).
Say
Sokoto
SOKOTO
Zinder
Kano
BORNOU
Lagos
Accra

Map No. 48



The Anglo-French Declaration (Article 3) established a "zone of influence" line north of 15°N. (Taken from the Livre Jaune map).

The Livre Jaune map erroneously portrayed this section as a delimited boundary shown by a solid line. In fact, only the section of the line running north to approximately 12°N had been delimited, and north of that point to 15°N, remained to be delimited.

21 March 1899

The Anglo-French Declaration delimited a boundary from approximately 5°N to 12°N. The portion of the boundary north to 15°N remained to be delimited.

Commercial Zone

Headquarters responded that their data concerning these borders were scarce and uncertain; but the staff drew the borders on the map in an approximate fashion[134]. The fact that in 1902 the southern boundary of Tripoli was undefined is confirmed by a note of 3 February 1902 of the Intelligence Division of the British Foreign Office, to which was enclosed a sketch map (Map No. 49) illustrating how the boundary was generally shown on maps[135]. On 12 September 1902, the Italian Foreign Ministry asked the Italian Ambassador to send to Rome copies of the "yellow book (Livre jaune), including map"[136]. These were sent from Paris on 22 September and received in Rome, as acknowledged on 6 October[137]. Of course, all of this occurred well after the Accord letters had been signed.

5.94 It is evident that Prinetti was not disabused by Barrère as to whether a map had been annexed to the 1899 Declaration, and that he was subsequently led to believe that the map published in the Livre jaune had actually been annexed to the Declaration. Nevertheless, if the Livre jaune 1899 map is examined closely (Map No. 48), "la frontière Tripolitaine indiquée" mentioned in Prinetti's letter is shown on the map as the wavy line of small, black dots[138] running from Ghadamès, at the upper left side of the map, southward past Ghat and Toummo, which lie on the Tripolitanian side of the line. This boundary then turns northeast, intersects the Tropic of Cancer at about 16°E longitude, and then continues northeast and then almost due north. This was the boundary of Tripolitania traditionally shown on maps at that time, and it coincided generally with the map sketched by British Intelligence mentioned above (Map No. 49).

5.95 In point of fact, no such boundary of Tripolitania had ever been established by treaty or in any other formal manner. This is confirmed by the fact that the Italian General Staff could only draw this boundary in an

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[134] See, Letters of 18 July 1901 and 21 July 1902 and Letter of 28 July 1902, Italian Archives Annex, pp. 6-11.

[135] See, Handwritten Letter of the Intelligence Division, 3 February 1902, and attached sketch map, FO 101/94, British Archives Annex, p. 76.

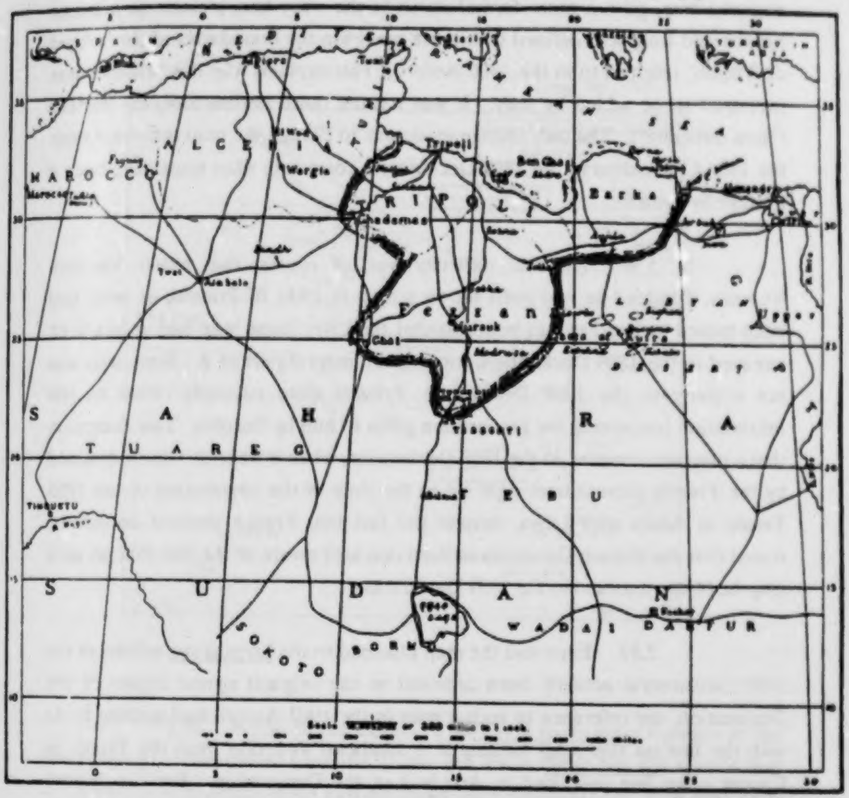
[136] See, Letter of 12 September 1902, Italian Archives Annex, p. 12.

[137] See, Letter of 22 September 1902 and Letter of 6 October 1902, Italian Archives Annex, pp. 14 and 16.

[138] On the reproduction of the original (Map No. 40, para. 5.16, above) they appear as small black dash marks.

Map No. 49

NORTH AFRICA SHEWING CARAVAN ROUTES



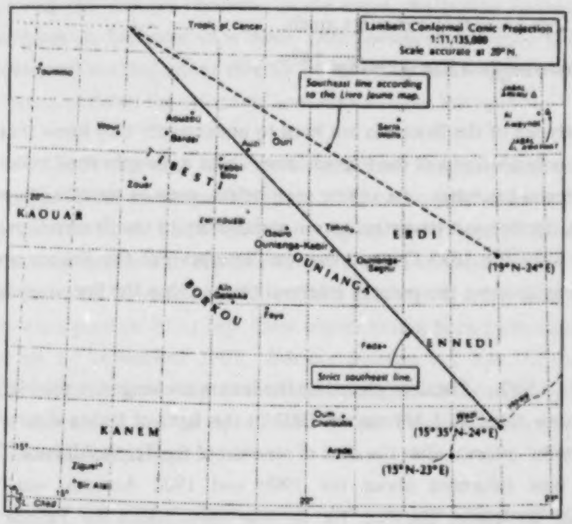
Source: Note dated 3 February 1902.
British F.O. 101/44.

approximate fashion. Prinetti's addition to the draft, which referred to an annexed map, gave a more formal status to the wavy line, at least as between France and Italy, and defined with more precision the boundaries of the "vilayet de Tripoli" referred to in the 1900 Accord. This explains why this sentence was proposed to be added by Italy. It was treated quite perfunctorily by Barrère ("sans difficulté"). The only change made was to change the map reference from the 1898 Convention to the 1899 Declaration, correcting what must have been a mistake by Prinetti.

5.96 The real difficulty was, of course, that either Visconti-Venosta, if indeed he had been shown a map in 1900, or Prinetti, or both, had been misled by Barrère into believing that the Livre jaune map had in fact been annexed to the 1899 Declaration, forming an integral part of it. Since Italy was not a party to the 1899 Declaration, Prinetti quite naturally relied on the information concerning the Declaration given to him by Barrère. This deception that a map was annexed to the 1899 Declaration, when it was not, was maintained by the French Government right up to the time of the negotiation of the 1955 Treaty of Amity with Libya, despite the fact that French internal documents reveal that the French Government itself was well aware of the fact that no such map had been annexed to the 1899 Declaration.

5.97 Even had the map attached to the Livre jaune edition of the 1899 Declaration actually been annexed to the original signed copies of the Declaration, the reference to such a map in the 1902 Accord had nothing to do with the line on that map running in a southeast direction from the Tropic of Cancer - the line described in Article 3 of the Declaration. For the Accord referred only to the specific boundary of Tripolitania ("la frontière Tripolitaine indiquée"), which was so clearly marked on the Livre jaune map. In the light of the 1890 Declaration, under which Great Britain and France had agreed to the extension southward of the Algerian hinterland to the Say-Barroua line - Barroua lying almost directly south of Tripoli - and the subsequent delimitation of that line in the 1898 Anglo-French Convention, it is not surprising that Italy wanted it made clear that the boundary between Ghadamès and Toummo, as traditionally shown on maps at the time, remained intact as the boundary of the vilayet of Tripoli that the 1900-1902 exchange of letters protected. Of course, the 1900-1902 Accords could not have had the effect of delimiting any such a boundary between Tripolitania and France's territory or possession since at the time, Italy had no right or title to the area at all; Tripolitania was under Ottoman sovereignty.

Map No. 50



5.98 While on the subject of the Livre jaune map, a glance at the line running southeastward from the Tropic of Cancer (Map No. 48) reveals that it is drawn in a direction more east-southeast than southeast and intersects 24°E longitude at approximately 19°N latitude, far to the north of the intended meeting point of the end of the southern sector boundary of the 1899 Declaration, which could not have been further east than 23°E longitude nor to the north of 15°N latitude[139], as illustrated on Map No. 50. That may well be why France maintained the fiction that this map had been annexed to the 1899 Declaration, for by pushing the intended line northward, it substantially modified it in her favour (though this was contrary, as seen above, to the preferences actually expressed by the French in the course of the travaux préparatoires). This was perceived by the British Foreign Office when the British Ambassador in Paris, Lord Sanderson, obtained a copy of the Livre jaune containing text of the 1899

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[139] See, para. 5.42, above.

Declaration and the map, which he forwarded to Lord Salisbury with this handwritten comment:

> "The French have drawn the line from the Tropic of Cancer to E.S.E. instead of S.E.
>
> I do not know that it matters much.
>
> Otherwise their line seems fair[140]."

The indifference of the British is not hard to understand: they knew that the line concerned only the limits of the French "zone", that is, its sphere of influence, and not a territorial boundary. As will be seen below, even as modified by the Livre jaune map, the line was nevertheless not satisfactory to the French Government; so that in 1919 the 1899 Declaration was "interpreted" (by France and Great Britain) so as to move the point of intersection, and thus the line, even further to the north.

5.99 The date placed on the letters exchanged in the 1902 Accord was ultimately fixed at 1 November 1902 in the light of Italy's desire to leave several months' interval after the date of renewal of the Triple Alliance. The man who was best informed about the 1900 and 1902 Accords was France's Ambassador to Rome, Barrère; for he had participated for France in both negotiations, unlike Prinetti. In 1912, Barrère was still the French Ambassador in Rome. On 10 March 1912, he sent a detailed summary of these Accords to the Foreign Minister, Poincaré[141]. The need for such a summary had been occasioned by a falling out between Italy and France. Poincaré had asked to be briefed as to the value and implications of these Accords, particularly that of 1902.

5.100 In his dispatch, Barrère gave a most complete account of the history of the Accords. He explained how the 1902 Accord was inspired by the threat to France's security posed by the Triple Alliance and how Prinetti had initially approached with trepidation the subject of a counter-balancing agreement with France. Nevertheless, realizing that the text of the Triple Alliance Treaty could not itself be modified, Prinetti came around to offering France satisfactory assurances. He had told Barrère that the Treaty's secret text posed no problem for France, only the Treaty's annexes, and that these were to disappear with the Treaty's renewal. In the event, the Italian Ambassador in a secret telegram to Delcassé of 4 June 1902 specifically assured him that the Treaty contained nothing either directly or indirectly of an aggressive character toward France, and that the offending annexes had been left out[142].

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[140] Lord Sanderson's Handwritten Note of 27 March 1899. FO 27/3456. British Archives Annex, p. 37. As is discussed in para. 5.182, below, and illustrated by Map No. 63 appearing there, a British War Office map of 1916, showed the line as descending almost exactly southeast. If extended to intersect at 24°E longitude, it would have done so at approximately 15°30'N latitude.

[141] Barrère-Poincaré Dispatch, 10 March 1912. French Archives Annex, p. 134.

5.101 Barrère then recounted how negotiations had begun, leading to the 1902 exchange of letters. He went into considerable detail disclosing that the letters had actually been signed on 30 June 1902, but that this was regarded as too close to the date of the Treaty's renewal[143]. So the letters were post-dated 1-2 November 1902; but as a precaution, a duplicate version of the letters was signed on 10-11 July, these copies having been exchanged and then destroyed on 1-2 November 1902. Barrère pointed out that the declarations concerning Morocco and Tripolitania had intentionally been linked with the provisions concerning the interpretation of the Triple Alliance in the 1902 Accord. Barrère summarized it this way:

> "L'accord n'est pas un contre-traité, mais il est une contre-partie de la Triplice qu'il réduit à peu de chose sur le point qui nous interesse le plus[144]."

He concluded that the 1902 Accord was still of considerable value to France and added this:

> "Mais il ne me paraît pas sans utilité d'observer que même la partie relative au Maroc et à la Tripolitaine n'a pas perdu son intérêt et en conservera pour nous tant que la France n'aura pas établi d'une façon absolument definitive sa domination sur le territoire chérifien[145]."

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[142] Tornielli-Delcassé note, 4 June 1902, French Archives Annex, p. 117.

[143] Barrère-Delcassé Telegram, 30 June 1902, and Barrère-Delcassé Dispatch, 10 July 1902, French Archives Annex, p. 124.

[144] Barrère-Poincaré Dispatch, 10 March 1912, French Archives Annex, p. 139.

[145] Ibid., French Archives Annex, pp. 140-141.

5.102 There was not a hint in this full and definitive account - given by the person most eminently qualified to give it - of the Accords being of value to France at that time (when Italy was clearly the heir apparent to the Ottoman Empire's African interests[146]) because France believed that Italy had, in these Accords, accorded recognition to the southeast line set out in Article 3 of the 1899 Declaration or renounced the Ottoman Empire's Tripolitanian hinterland claim. It is not conceivable that such an exhaustive report, intended to advise the Quai d'Orsay whether or not to abrogate these Accords, would have left out such important considerations if at the time they had been intended to be among the effects of the Accords. The fact is that the French contentions as to the existence and location of a Libyan southern boundary, which relied so heavily on the 1900-1902 Accords, were to emerge until some ten years after Barrère's 1912 report, as will be seen further on in this historical account.

SECTION 6. The Secret Anglo-Italian Accord

5.103 While the negotiations between Italy and France were under way in 1902, the Italians approached the British. It will be recalled that in 1899, after learning of the 1899 Declaration, Foreign Minister Canevaro had proposed a three-party declaration in order to clarify the effect of that agreement as well as to give recognition to Italy's special status in Tripolitania[147]. This proposal had been turned down at the time by Great Britain and France. In 1902, Prinetti renewed the attempt, seeking this time to enter into separate agreements with the British and French. It may be noted in passing that since Great Britain was one of the parties to the 1899 Declaration, any accord between it and Italy as to the meaning and effect of the Declaration would have a significance equal to any Franco-Italian accord on the same subject.

5.104 The negotiations between Italy and Great Britain began in January 1902. On 13 January, Prinetti handed the British Ambassador, Lord Currie, a draft declaration stating that the 1899 Declaration established, in the direction of the vilayet of Tripoli, "an extreme limit of expansion which they (Great Britain and France) do not intend to overpass in any eventuality"[148].

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[146] The Treaty of Lausanne (Ouchy) was concluded between Italy and the Ottoman Empire in October 1912. See, para. 5.130, et seq., below.

[147] See, para. 5.50, et seq., above.

[148] See, Currie-Lansdowne Telegrams (handwritten), 13 17, 20, 21 and 23 January 1902, FO 170/582, British Archives Annex, pp. 53-54.

Lord Currie asked to see what Italy and France had recently agreed to in their secret exchange (a reference to the 1900 letters of Barrère and Visconti-Venosta) and was misinformed by Prinetti that not only France but Germany and Austria had given Italy assurances that it was heir apparent to the Ottoman Empire's rights to the *vilayet* of Tripoli[149]. The British were skeptical of this report and in checking found it to be exaggerated. In any event, shortly thereafter, Prinetti gave Currie a copy of the text of the secret 1900 Franco-Italian Accord.

5.105 On 3 February 1902, the Foreign Office (Lord Lansdowne) sent a dispatch to Lord Currie in Rome setting out Great Britain's position in some detail. It is an important document in this case for it reviews the history and scope of the 1899 Declaration. In answer to Prinetti's complaint that no special reference had been made to Italy in concluding the 1899 Declaration, the dispatch stated:

> "There was, however, apparently no reason why such a reference should have been made. The Agreement did not affect the existing rights of any Power, and certainly did not affect Italian interests, present or prospective, on the southern shores of the Mediterranean[150]".

Lansdowne went on to refer to past statements of Italy's Foreign Minister making it clear that Italy had no concern over the 1899 Declaration so long as it might affect regions south of 15°N latitude; but that if its effect extended north of that parallel, so as to include part of the *hinterland* of Tripoli, Italy would consider the Declaration to have disturbed the *status quo* in the Mediterranean. There then follows this very significant statement:

> "This definition of the interests of Italy was not lost sight of by Lord Salisbury. The line laid down in the Anglo-French Agreement, to the west and east of which Great Britain and France respectively engaged to acquire neither territory nor influence, is not drawn further north than 15° of north latitude. To the north of that degree the line represents merely the limit beyond which the French Government would not at any time advance its pretensions. The Articles in which this limit is laid down were carefully worded so as to avoid bringing into question either the existing rights of other Powers or any prospective claim which they might hereafter put forward; and in regard to the territories north of 15°, there is no indication that Great Britain contemplates either extension of influence or acquisition of territory to the disturbance of the *status*

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[149] *Ibid.*

[150] Lansdowne-Currie Dispatch, 3 February 1902, FO 101/94, *British Archives Annex*, p. 73.

> quo. The effect of the stipulation is merely that France undertakes not to advance, in any event, so as to overlap Darfur to the north, while she is equally protected from any extension of British influence which would similarly overlap Wadai or command the main caravan routes leading thence to the Mediterranean."

5.106 As to the sort of declaration Great Britain was prepared to make, the dispatch indicated that the British Government would be willing to place clearly on record that the 1899 Declaration -

> "... so far as it affected the Hinterland of Tripoli, was entirely without prejudice to the rights of other Powers."

As to the province of Tripoli itself, "the southern boundary of which does not appear to have been very accurately defined", it was stated that the whole of the province was believed to "lie north of the point at which the Anglo-French line commences".

5.107 But Italy sought more than this. It wanted a positive declaration of British disinterest then and thereafter. Great Britain was not prepared to give this, in part because it would be in conflict with treaty engagements with the Ottoman Empire. The discussions culminated in an agreement on the text of a declaration by Great Britain, addressed to Foreign Minister Prinetti by Lord Currie, the British Ambassador. The Declaration, dated 11 March 1902, in pertinent part, was as follows -

> "... that the (1899 Declaration) laid down a line to the east and west of which respectively (France and Great Britain) bound themselves not to acquire territory or political influence in the regions traversed by the said line, but that the Agreement in no way purported to deal with the rights of other Powers, and that, in particular, as regards the vilayet of Tripoli and the Mutessarifik of Benghazi, all such rights remain entirely unaffected by it[151]."

5.108 The remainder of the Declaration assured Italy that Great Britain had no ambitious designs in regard to Tripoli; that Great Britain continued to wish to maintain the status quo there as in other parts of the Mediterranean; but that if any alteration of the status quo should occur-

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[151] Anglo-Italian Accord of 11 March 1902, International Accords and Agreements Annex, No. 6

> "... so far as is compatible with the obligations resulting from the Treaties which at present form part of the public law of Europe, such alteration should be in conformity with Italian interests."

As a counter-part, the Declaration ended with a statement that these assurances were given on the understanding that Italy had entered into no arrangements with other Powers in regard to this or other parts of the Mediterranean coast "of a nature inimical to British interest".

5.109 The 1902 British Declaration was handed to Italy's Foreign Minister as part of an exchange of documents[152]. On 11 March, Lord Currie handed Prinetti a copy of Lord Lansdowne's dispatch of 7 March 1902[153]. This, in itself, is important since this statement of interpretation by Great Britain of the 1899 Declaration became a part of the exchange. On 12 March, Currie handed Prinetti a note containing the British Declaration dated 11 March and received from Prinetti a copy of Barrère's short letter of 14 December 1900 to Visconti-Venosta containing France's declaration in regard to Tripoli[154]. This took place, in fact, prior to signature of the exchange of letters on 30 June 1902 that constituted the Franco-Italian Accord of 1902. Lord Lansdowne indicated to Lord Currie that it was not desirable that the text of the British Declaration be published but that there would be no objection to the general purport of the assurances being made known, provided Great Britain was consulted as to the terms of the announcement.

5.110 This exchange of documents constituting the 1902 Anglo-Italian Accord made clear, once again, that the 1899 line (at least north of 15°N latitude, as the travaux shows) was not intended to be a territorial boundary and that the 1899 Declaration did not affect the rights of third States (res inter alios acta). But it had additional significance. If the texts of the 1900 Barrère letter comprising part of the 1900 Franco-Italian Accord and the British 1902 Declaration are compared, it is seen that the British Declaration referred to the 1899 southeast line, whereas the Barrère letter of 1900 did not. Barrère's letter and the clarification of it set out in the 1902 Accord only concerned the

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[152] Currie-Lansdowne Dispatch, 15 March 1902, enclosure 1 in No.1, FO 170/587, British Archives Annex, p. 80.

[153] See, Currie-Prinetti, 7 March 1902, and notation thereon, FO 170/587, British Archives Annex, p. 78.

[154] Enclosure 2, in No.1, Currie-Lansdowne, 15 March 1902, op. cit.

Tripolitanian boundary, which both Italian and British documents of that time indicated was not precisely known. This was entirely understandable. Great Britain's exchange with Italy concerned the part of the region in which the British were interested - the Cyrenaican side - and the southeast line of Article 3 of the 1899 Declaration concerned almost exclusively Cyrenaica and its *hinterland*. France, on the other hand, was concerned with the Tripolitanian part of Libya (including Fezzan) and the boundary between French territories and possessions and that sector of Libya, which lay to the east of these territories and possessions. This only concerned the Tripolitanian frontier as far as Toummo, shown as a wavy line on the *Livre jaune* map (*Map No. 48*). The southeast line had nothing to do with the 1900-1902 Accords; it related to the *hinterland* of Cyrenaica not Tripolitania, and thus was of interest to the British. Thus, if Italy recognized the southeast line in the Anglo-Italian Accord it was as part of a package of understandings, paramount among which was the British assurance that the southeast line was neither a boundary nor affected the rights of other Powers not signatory to the 1898-1899 agreements.

SECTION 7. Attempts To Delimit the Tripolitanian Boundaries and Related Events up to World War I

(a) Franco-Ottoman Boundary Negotiations (1910-1911)

5.111 One of the notable events of this period was the delimitation of the boundary between Tripolitania and Tunisia running from Ras Ajdir on the Mediterranean to Ghadamès (*Map No. 51*). Negotiations were opened in January 1910, resulting in an accord between France and the Ottoman Empire as to the delimitation procedures to be followed. A very detailed delimitation agreement was reached on 19 May 1910 following completion of the work of the commission appointed under the January accord[155]. Demarcation of the boundary was completed in 1911 with the placement of 333 boundary pillars along that boundary.

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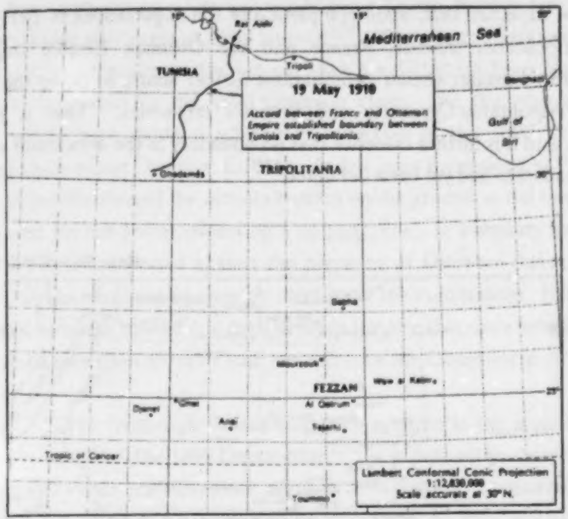
[155] *See*, Convention of Delimitation between Tripolitania and Tunisia of 19 May 1910, *International Accords and Agreements Annex*, No. 9. *See*, generally, Pichon, J.: *La Question de la Libye dans le Règlement de la Paix*, Paris, J. Peyronnet and Cie, 1945.

Map No. 51

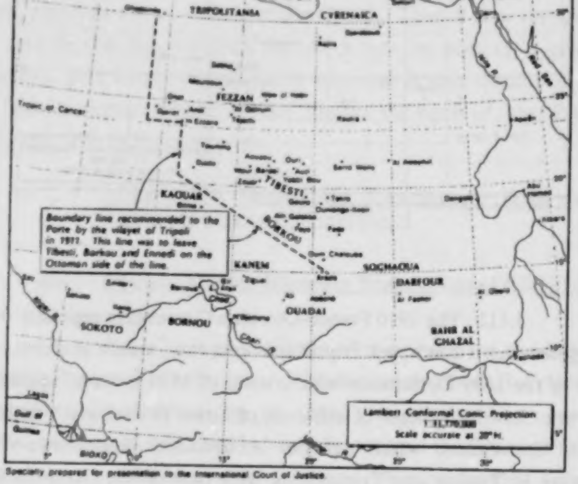


Specially prepared for presentation to the International Court of Justice

5.112 The 1910 Franco-Ottoman Convention expressly delimited a boundary between Tunisia and Tripolitania and, thus, stands in sharp contrast to Article 3 of the 1899 Declaration which, north of 15°N latitude, indicated only a dividing line between spheres of influence of Great Britain and France. Unlike the 1910 Convention, which set out a boundary line between France's protectorate of Tunisia and Tripolitania, then part of the Ottoman Empire to which the Sultan held undisputed sovereign title, the 1899 southeast line established a limit to what was termed France's "zone", but this "zone" did not cover any territory over which France had ever asserted, let alone held, title. Thus, the 1910 Convention established an international boundary, whereas the 1899 Declaration, at least north of 15°N latitude, did not. As a result, the form these two agreements took was totally different.

5.113 Since the Ottoman Empire had asserted a territorial claim in 1890 embracing areas directly affected by the 1898 and 1899 agreements between France and Great Britain, and in the light of the fact that, starting in 1908 the Ottomans had occupied parts of Kaouar, such as Bilma, and the key oases in the Borkou-Tibesti region, including Zouar, Bardaï and Aïn-Galakka[156], it would be expected that, upon completion of the negotiations of 1910 over the Tunisia-Tripolitania frontier, France and the Ottoman Empire might have proceeded to consider similar delimitations further south, to cover the frontiers between Tripolitania-Cyrenaica and France's territories. That is just what happened; and it is further evidence that no boundary in the area south and to the east of Ghadamès had yet been delimited[157].

Map No. 52/A



Boundary line recommended to the Porte by the vilayet of Tripoli in 1911. This line was to leave Tibesti, Borkou and Ennedi on the Ottoman side of the line.

Lambert Conformal Conic Projection
1:31,770,000
Scale accurate at 20°N.

Specially prepared for presentation to the International Court of Justice

5.114 In 1911, France and the Ottoman Empire agreed to form a mixed commission to continue the delimitation of the boundaries in the Sahara and the Sudan beyond Ghadamès. The vilayet of Tripoli recommended to the Porte that the following line be proposed: from Ghadamès to Ghat along 9°E longitude; then to the oases at In Ezzan; then south to between 20° and 21°N latitude; then southeast on a line that would leave Tibesti, Borkou and Ennedi on the Ottoman side and intersect 15°N latitude[158]. The vilayet's proposal has been sketched out in approximate fashion on Map No. 52/A; on Map No. 52/B the proposal is compared to the 1890 Ottoman claim. As the map shows, the proposal would have made a substantial reduction in the 1890 Tripolitanian hinterland claim of the Ottoman Empire. As has been mentioned in Part IV, the vilayet's proposal reflected the actual situation on the ground at the time, with the Ottoman and French forces observing a de facto line. In February and again in May 1911, France protested against the presence of Ottoman forces in Bardaï and Aïn Galakka, demanding an early meeting of the commission. However, the negotiations between France and the Ottoman Empire that were scheduled were destined to be cancelled abruptly with the defeat of the Ottomans in 1912.

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[156] See, para. 4.126, et seq., above.

[157] Although the secret Franco-Italian Accords of 1900 and 1902 had referred to the boundaries of Tripolitania as shown on the French Livre jaune map mentioned there (at least as far as Toummo), this was not a delimitation agreement since, inter alia, Italy had no rights or title in respect to Tripolitania, which were under Ottoman sovereignty. See, para. 5.97, above.

5.115 Although France's opening position in the negotiations was to have been based on the 1899 Declaration[159], it is difficult to discern how that agreement was either relevant, since north of 15°N latitude it concerned spheres of influence not territorial boundaries, or opposable to the Ottoman Empire. This certainly was the publicly stated view of Great Britain at the time, as has been seen above, and would continue to be its view. Yet, leaving this aside, the overtures to negotiate a boundary made to the Ottoman Empire revealed that as of 1911 the French Government recognized - and indeed conceded - that no international boundary existed between Tripolitania and France's adjoining territories or possessions, with the exception of the recently concluded Tunisia - Tripolitania boundary, which extended only as far as Ghadamès.

5.116 With the Italian invasion of Libya, the Ottoman Empire's defeat and the entry into force of the Treaty of Ouchy, these negotiations ceased to have any object. Sovereignty over Tripolitania and Cyrenaica, and their hinterland, passed to Italy. As the Ottoman forces were withdrawn from the area, French forces took advantage of the situation after the Treaty was signed, replacing the Ottoman garrisons in Borkou, Ennedi, Ounianga and, in 1913-1914, Tibesti. French forces even advanced into the Sarra wells south of Koufra, and

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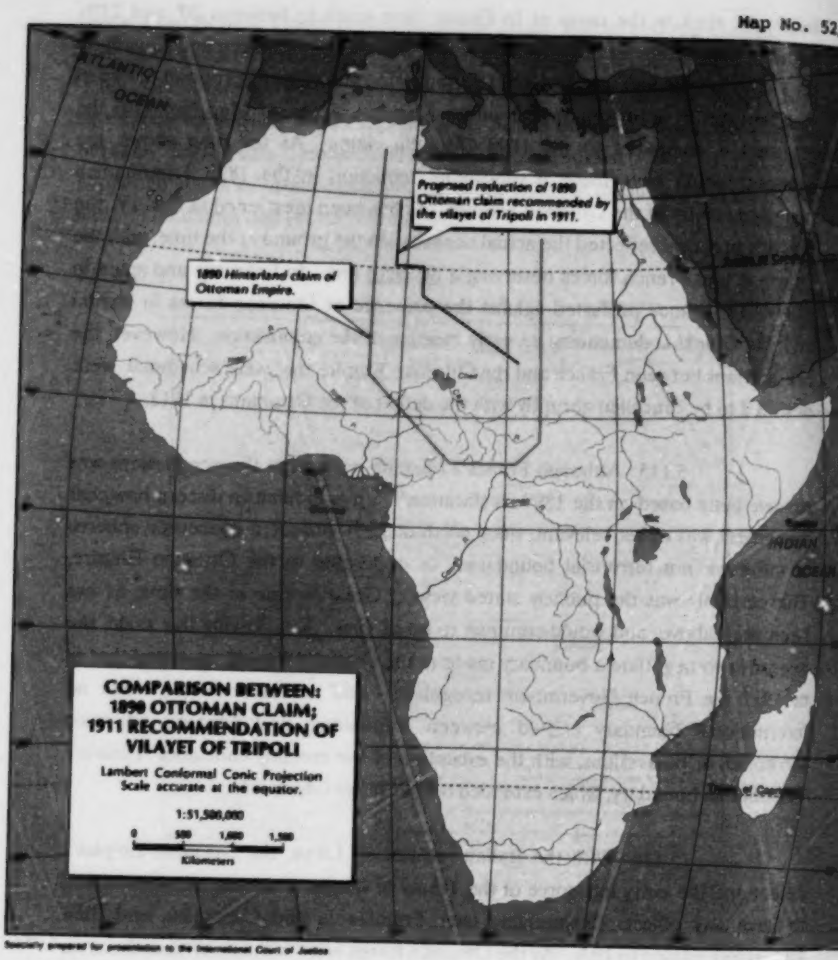
[158] See, Cayci, A.: Buyak Sahra'da Türk-Fransiz Rekabeti (1858-1911), Erzurum, Ataturk University Publication House, 1970, pp. 161-162 and 164-165. Exhibit 38. This proposal has been mentioned in para. 4.137, above. See, also, Map No. 35 referred to in para. 4.140, above.

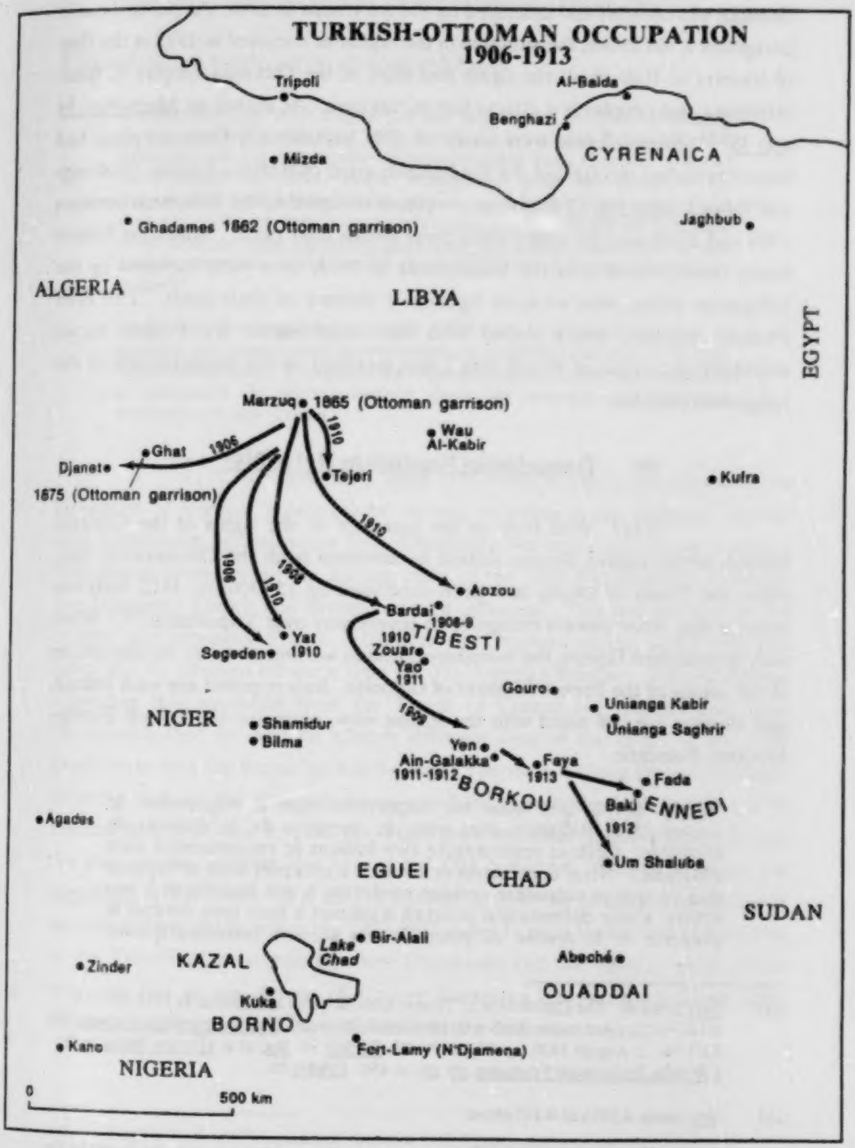
[159] See, Pichon, op. cit., pp. 70-71.

Map No. 52


ATLANTIC OCEAN
Proposed reduction of 1890 Ottoman claim recommended by the vilayet of Tripoli in 1911.
1890 Hinterland claim of Ottoman Empire.
L. Chad
INDIAN OCEAN
COMPARISON BETWEEN: 1890 OTTOMAN CLAIM; 1911 RECOMMENDATION OF VILAYET OF TRIPOLI
Lambert Conformal Conic Projection
Scale accurate at the equator.
1:51,500,000
0
500
1,000
1,500
Kilometers

Specially prepared for presentation to the International Court of Justice

Map N° 53



TURKISH-OTTOMAN OCCUPATION
1906-1913

studied how they might be destroyed[160]. The important Senoussi zawiya at Ai Galakka was overrun and destroyed by French troops in 1913. As pointed out i paragraph 4.168 above, the situation in the region as it existed in 1912 at the tim of transfer to Italy of all the rights and titles of the Ottoman Empire to thes territories and peoples is a critical fact in this case. As shown on Maps Nos. 3 and 35[161], French forces were south of 15°N latitude; and Ottoman posts ha been established throughout the borderlands areas of Borkou, Ennedi, Ouniang and Tibesti. Map No. 53 illustrates the places occupied by the Ottomans betwee 1906 and 1913, and the times when these events took place. When the Frenc forces moved north into the borderlands in 1913, they were opposed by th indigenous tribes, who went on fighting in defense of their lands. This brie French incursion, which ended with the requirements for French troop elsewhere as a result of World War I, had no effect on the territorial title of th indigenous peoples.

(b) Franco-Italian Negotiations (1912-1914)

5.117 With Italy as the successor to the rights of the Ottoma Empire in the region, France shifted its attention from the Ottomans to Italy After the Treaty of Ouchy had been concluded on 15 October 1912, Italy wa anxious that other Powers recognize its sovereignty over Tripolitania[162]. Whe Italy approached France, the boundary question was injected into the discussion at the urging of the French Minister of Colonies. Italy opposed any such linkage and Barrère himself sided with the Italian view, saying to the French Foreig Minister, Poincaré:

> "Il me paraît que nous ne risquerions rien à reconnaître la souveraineté italienne sans viser la question de la fixation de frontière. Celle-ci reste intacte (les Italiens le reconnaissent sans difficulté). Nous demeurons maîtres de n'accepter sous ce rapport que ce que je considère comme conforme à nos intérêts et à nos droits. Cette délimitation pourrait d'ailleurs à mon sens devenir le prétexte de la remise au point de nos accords [antérieurs] avec

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[160] See, Tilho, J.: "The Exploration of Tibesti, Erdi, Borkou, and Ennedi in 1912-1917: A mission entrusted to the Author by the French Institute". The Geographical Journal. Vol. LVI, No. 2, August 1920, pp. 81, and 94-97. Exhibit 39. See, also, Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 456. Exhibit 26.

[161] See, paras. 4.120 and 4.141 above.

[162] See, para. 5.130, et seq., below. A copy of the Treaty of Ouchy is to be found in the International Accords and Agreements Annex, No. 10.

> l'Italie comme la partie fixée par la convention franco-anglaise de 1899 fut le motif des accords franco-italiens de 1900 et 1902[163]."

Poincaré did not exactly agree, replying as follows:

> "Je regrette que vous n'ayez pas fait remarquer au Gouvernement italien que la France n'est dans le cas d'aucune des Puissances qui sont disposées à reconnaître la souveraineté sans réserve. L'Italie va devenir, en effet, notre voisine et nous ne pouvons lui reconnaître cette souveraineté sans préciser le territoire auquel elle doit s'étendre et sans sauvegarder nos droits. Nous ne pouvons nous assurer 'une situation hors pair en Italie', aux dépens des intérêts français; notre amitié pour l'Italie ne doit pas tourner en duperie.
>
> La Convention anglo-française de 1899 part du tropique du Cancer et laisse par conséquent indéterminée la frontière sur plus de douze cents kilomètres. Il dépend du Gouvernement italien de formuler sa demande de reconnaissance dans des termes qui réservent entièrement nos droits[164]."

5.118 It seems fairly clear that when Poincaré mentioned 1,200 kilometres of frontier "indeterminée" he was referring to the Algerian frontier with Tripolitania running south from Ghadamès, the end point of the Tunisia - Tripolitania boundary, to the starting point of the 1899 Declaration's southeast line separating French and British zones of influence. This was the part of the frontier that interested France. However, the Ottoman claims, which Italy had fallen heir to, affected far more than just the Algerian frontier. If Poincaré was suggesting that southeast from the Tropic of Cancer the frontier had been determined, then he held an entirely different view of the effect of the 1899 Declaration than the British held at the time. The view of Great Britain had been imparted to both the Ottoman Empire and Italy, assuring them that the 1899 Declaration's southeast line did not affect their interests. In any event, this was the part of the frontier that concerned Great Britain, since it affected the hinterland of Cyrenaica. It is also of interest to note the limited value Poincaré appears to have attributed to the 1900-1902 secret Franco-Italian Accords even as to the Tripolitanian frontier between Ghadamès and the starting point of the southeast line at the Tropic of Cancer illustrated on the Livre jaune map. Poincaré evidently wanted a specific delimitation of that area.

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[163] Barrère-Poincaré Telegrams, 17 October 1912, French Archives Annex, p. 142.

[164] Poincaré-Barrère Telegram, 18 October 1912, French Archives Annex, pp. 143-144.

5.119 What ended up being agreed was for France to announce its recognition of Italy's sovereignty over Tripolitania and Cyrenaica and, several days later, to publish the text of a new Franco-Italian Accord. This Accord, dated 28 October 1912, signed by Poincaré and Tittoni, the Italian Ministry of Foreign Affairs, provided as follows:

> "Le Gouvernement de la République française et le Gouvernement royal d'Italie, désireux d'exécuter dans l'esprit le plus amical leurs accords de 1902, confirment leur mutuelle intention de n'apporter réciproquement aucun obstacle à la réalisation de toutes les mesures qu'ils jugeront opportun d'édicter, la France au Maroc et l'Italie en Libye.
>
> Ils conviennent de même que le traitement de la nation la plus favorisée sera réciproquement assuré, à la France en Libye et à l'Italie au Maroc, ledit traitement devant s'appliquer de la manière la plus large aux nationaux, aux produits, aux établissements et aux entreprises de l'un et l'autre Etats, sans exception[165]."

Thus, France obtained a certain quid pro quo for recognizing Italy's sovereignty; but it did not concern the boundary question, which was not mentioned.

5.120 The subject of a frontier delimitation did not vanish with the 1912 Accord, however. According to the report made nine years later by M. Edouard Soulier to the Chambre des Deputés in connection with the Franco-Italian Accord of 12 September 1919, in which he referred to a 1914 report of M. Louis Marin, Italy and France agreed to a meeting in Berne to be held on 20 July 1914 by members of a joint Italian-French boundary commission to study the procedures to be followed[166]. The report of M. Marin had indicated that the task of the commission was to be concerned only with the Algerian frontier and was to go no further east or south of where a line from Toummo would meet the point of intersection of 16°E longitude and the Tropic of Cancer, which was the beginning point of the southeast line described in Article 3 of the 1899 Declaration.

5.121 The start of World War I put a halt to these negotiations. But just as in the case of the French overtures made to the Ottoman Empire in

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[165] A copy of the Franco-Italian Accord of 28 October 1912 is is attached as an Annex to the Poincaré-Barrère Dispatch, 29 October 1912, French Archives Annex, p. 146. See, also, International Accords and Agreements Annex, No. 11.

[166] J.O.R.F., Documents Parlementaires, séance du 22 décembre 1921, p. 569. (A copy of this page is attached as Exhibit 40.)

1911, so also in this agreement with Italy to sit down and delimit the boundary beyond Ghadamès, the French Government recognized three things: first, that no agreed boundary south of Ghadamès existed; second, that France's main interest was with the boundary between Algeria and Tripolitania-Fezzan, not with Cyrenaica, which lay in the British sector; and third, that in 1914 the French Government did not regard the 1900-1902 Accords as having disposed of these boundary questions so far as Italy was concerned.

(c) The Proposed Expedition of Captain Tilho to Tibesti

5.122 It has been noted in a previous section that a Turkish force of gendarmes had occupied Bilma in the region of Kaouar in 1902 and had hoisted the Ottoman flag[167]. Until 1906, French forces had not advanced as far as Bilma, although the Turkish force had been withdrawn by that time. By 1908, Ottoman forces were in Tibesti, establishing a "résidence gouvernementale"[168] in Bardaï, and in April, 1911 oases in Borkou were occupied and an important military post was established at Aïn Galakka. In 1912, the Ottomans moved into Ennedi. All this is illustrated on Map No. 53. Until after the Treaty of Ouchy, no French military posts had been established north of the de facto Ziguei-Arada line[169].

5.123 In 1907, France's Ambassador in London, Paul Cambon, was quick to grasp the situation so far as France was concerned: the 1899 Declaration, which he had negotiated, had, according to him, placed the Tibesti and Borkou in France's sphere of influence; but France had never occupied these regions, let alone settled them. As Cambon put it in a dispatch to the Quai d'Orsay:

> "La déclaration signée à Londres le 21 mars 1899 a placé dans notre sphère d'influence le Tibesti et le Borkou. Mais nous n'avons fait aucun acte de possession dans ces régions et rien n'empêcherait un explorateur d'une puissance n'ayant pas reconnu nos droits, l'Allemagne par exemple, d'y planter le drapeau de son pays. Vous n'ignorez pas d'ailleurs que la Porte revendique ces contrées comme faisant partie de l'hinterland de la Tripolitaine : elle a poussé récemment ses postes dans le sud de cette province

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[167] See, para. 5.78, et seq., above.

[168] See, Communiqué from the French Consul in Tripoli to the Minister of Foreign Affairs, 19 November 1929, French Archives Annex, p.161.

[169] See, para. 4.120, above, and Map No. 34 referred to there.

> beaucoup plus loin qu'elle ne l'avait fait jusqu'à présent et nous risquons de la voir s'installer un jour ou l'autre au Tibesti. Nous avons d'autant plus à redouter des incidents désagréables dans cette partie de notre empire africain qu'elle est voisine de l'oasis de Koufra, centre d'action des Senoussi. Il y aurait donc un intérêt urgent à ce que nous affirmions nos droits au Tibesti et au Borkou par un acte de prise de possession, tout au moins par l'envoi d'une mission.
>
> Une telle entreprise eût présenté de grandes difficultés il y a quelques années. Elle est devenue beaucoup plus facile depuis que nous occupons Bilma. En ce moment, la présence sur le bord du lac Tchad de la mission de délimitation de la frontière anglo-française nous offre une occasion très favorable de faire procéder à une exploration du Tibesti[170]."

Ambassador Cambon had a specific proposal to make - to authorize an expedition through the Tibesti by a certain Captain Tilho, who had just completed his work for the delimitation commission that was implementing the 1898 Convention in the region west of Lake Chad. As just shown above, Cambon's concern over Ottoman activity in the area, both present and prospective, was well justified.

5.124 The proposal that Captain Tilho[171] lead an expedition through the Tibesti and, in this way, establish some sort of French activity or presence there, was similar to a proposal already made by the Minister of Colonies[172]. Cambon's dispatch was given a good deal of attention by the Quai d'Orsay; there was no senior French diplomat more knowledgeable than he as to French colonial interests in Africa. In fact, the itinerary that Captain Tilho proposed to take in returning to France had already been a matter of high-level consideration. In a dispatch of 24 October 1907 to the Minister of Colonies, Foreign Minister Pichon had urgently requested that Tilho avoid the region of Djanet "où nous sommes engagés vis-à-vis du gouvernement Ottoman à observer jusqu'à nouvel ordre de statu-quo"[173].

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[170] Cambon-Pichon Letter, 6 December 1907, French Archives Annex, pp. 149-150.

[171] Rising subsequently through the ranks to General, Tilho was to become one of the more knowledgeable and prominent Frenchman on the question of the Libyan frontier with France's possessions, conducting a scientific and mapping expedition into Tibesti during 1912-1917, and contributing studies that influenced France's position in the 1934-1935 negotiations with Italy.

[172] Minister of Colonies - Ministry of Foreign Affairs, 15 October 1906, French Archives Annex, p. 273.

[173] Dispatch of 24 October 1907, French Archives Annex, p. 148.

5.125 Before reaching a decision on Cambon's request, Pichon asked to be brought up to date as to what was happening in the region. He was advised that in October 1906 Captain Tilho had been instructed, in carrying out his "études", not on any pretext to penetrate Borkou or Tibesti -

> "... qui n'ont pas encore été soumis à notre domination et où la présence de cet officier aurait pu donner lieu à des complications d'ordre international[174]."

5.126 In a dispatch of 9 March 1908, the Minister of Colonies advised Pichon that the Governor General of the A.O.F. (French West Africa) had advised against the proposal that Tilho pass by Borkou or Tibesti and had counselled, given the hostility of the inhabitants, that occupation of these regions should be carefully prepared and accomplished gradually[175]. As a result, Captain Tilho regained France by way of West Africa and did not enter the Libya-Chad borderlands. Pichon's reference to the inhabitants was, of course, to the indigenous tribes that the Senoussi Order had organized to resist the French military advances onto their lands.

5.127 This episode is another confirmation that Article 3 of the 1899 Declaration had not created a territorial boundary and that this continued to be the case after the secret Accords of 1900-1902. Ambassador Cambon, who had sat across the table from Lord Salisbury negotiating the 1899 Declaration, was in 1907 an ardent advocate that France act so as to occupy Borkou and Tibesti before the Ottoman Empire or some other Power should do so. Cambon urged France to affirm its rights by action before the Ottomans did, for the Ottoman Empire had laid claim to this area as part of the hinterland of Tripolitania. The French Government's response to his warning came too late. Ottoman forces occupied the oases of Borkou and Tibesti before the French, who were proceeding cautiously in the light of the strong resistance of the indigenous Senoussi tribes, who had been joined by Ottoman forces, to oppose the French military advances. The interlude between 1910 and 1913 in these regions, the extent of Ottoman occupation and the tacit understandings reached between the French authorities and the Ottoman forces and the Senoussi Order have been set out in paragraphs 4.120 to 4.164 above. The proposed Tilho expedition episode is a reflection of the modus vivendi between the opposing forces pending what were scheduled to be delimitation negotiations between the French and the Ottomans to fix the boundary. These negotiations thereafter, were cancelled in the light of the Treaty of Ouchy. Thereafter, World War I put an end to French plans to negotiate the boundary with Italy.

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[174] Minister of Foreign Affairs - Minister of Colonies Dispatch, 16 December 1907, French Archives Annex, p. 151.

[175] Dispatch of 9 March 1908, French Archives Annex, p. 278.

SECTION 8. Italy's Invasion of Libya in 1911; the Treaty of Ouchy of 15 October 1912

(a) Italy's Invasion of Libya

5.128 By 1911, after lengthy diplomatic and military preparations, and under the impetus of domestic public opinion, Italy had finally decided to start its war against the Ottoman Empire for the conquest of Libya. The war, which was announced by the ultimatum of 26 September, was declared on 29 September, and hostilities began immediately, with an enormous deployment of troops and arms. The determined resistance that its expeditionary force met in Libya soon led Italy - which in the meantime had proclaimed its "full and entire sovereignty" over Tripolitania and Cyrenaica (by Royal Decree No. 1247 of 5 November 1911, converted into Law No. 88 of 25 February 1912) - to enlarge the war zone by striking against Turkish interests elsewhere (Beirut, Dodecanese or Sporades Islands, Turkish straits, etc.).

5.129 Ultimately, a number of defeats suffered by the Ottoman armies, especially during the summer of 1912, and the danger created for Turkey by the establishment of the Balkan League, together with the moderating influence exerted on Italy by third Powers, led the two parties to negotiate a peace which, while allowing free rein to Italy's expansion in Libya, safeguarded other Ottoman interests. After difficult negotiations, the Peace Treaty was signed in Lausanne (Ouchy) on 15 October 1912[176].

(b) The Treaty of Ouchy

5.130 The Treaty of Ouchy is made up of several documents that are all closely related. The first such document (the "secret" Treaty) begins with a preamble noting the difficulties encountered by both parties in putting an end to the state of war -

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[176] See, Treaty of Lausanne (Ouchy) of 15 October 1912, International Accords and Agreements Annex, No. 10.

> "... provenant de l'impossibilité pour l'Italie de déroger à la loi du 25 février 1912 qui a proclamé sa souveraineté sur la Tripolitaine et sur la Cyrénaique et pour l'Empire Ottoman de formellement reconnaître cette souveraineté ... ."

5.131 Next, the "secret" Treaty placed on each party the obligation to promulgate within three days certain legislative measures, the substance of which was contained in three appendices that were an "integral part" of the Treaty (Article IX). Finally, Article V provided that a "public" Treaty (whose text was set forth in Appendix 4) was to be signed by the High Contracting Parties "... immédiatement après la promulgation des trois actes unilatéraux susdits". This Treaty was in fact signed on 18 October 1912.

5.132 It should be noted that the wording of the "unilateral acts" in question was also - like the provisions contained in the other two documents (the "secret" Treaty and the "public" Treaty) - the result of the negotiations between the parties, and therefore played a full role in the determination of their rights and obligations under the Treaty. In other words, in determining the meaning and effects of the 1912 Treaty for both parties, it is also necessary to take into account the contents of the domestic "unilateral acts", which each had undertaken to promulgate, and which had been established beforehand on the international level.

5.133 Certain aspects of two of these "unilateral acts", the Firman and the granting of Amnesty under Article III of the secret Treaty, deserve special attention.

(i) The Firman

5.134 The Firman (whose text is set forth in Appendix 1 to the Treaty), which Article I of the secret Treaty obliged the Sultan to address to the inhabitants of Tripolitania and Cyrenaica, and which was in fact promulgated on 18 October 1912, contained the following passage:

> "Me prévalant de Mes droits souverains Je vous concède une pleine et entière autonomie. Votre pays sera régi par de nouvelles lois et des règlements spéciaux, à la préparation desquels vous apporterez

> la contribution de vos conseils afin qu'ils correspondent à vos besoins et à vos coutumes."

5.135 In view of the context, it would be unreasonable to think that the word "autonomy" could be construed as "sovereignty" granted to the Libyan population; and the Porte never claimed this in subsequent discussions with Italy. To the contrary, the Porte's position was that it had *retained* sovereignty over Libya, without in any manner transferring it to Italy. Nevertheless, the expression in question, granting autonomy to the inhabitants, is contained in a document (the *Firman*) that is part of a Peace Treaty by which the Porte recognised the *fait accompli* of the Italian conquest and undertook in favour of Italy to remove from Libya the whole of its civil and military organization[177]. Thus, the Porte admitted that Italy would thereafter replace Turkey in the exercise of sovereignty (if not inheriting its title) over the two provinces, whose territorial limits were not identified in the provisions of the Treaty. However, the *Firman* had the effect of identifying the peoples whose autonomy Italy was obliged to respect in its administration of these territories. They comprised all the groups that fell within the category of "habitants de la Tripolitaine et de la Cyrénaïque" to whom the *Firman* was addressed.

5.136 Therefore, the granting of "autonomy" to the Libyan populations must be interpreted in a different way than as a granting of "sovereignty" to the inhabitants. Taking the passage from the *Firman* quoted above as a whole, and in the context of the entire Treaty, the scope and limits - and also the meaning - of the autonomy granted to the Libyan populations can be grasped. This autonomy was to consist of, *first*, the right to continue to enjoy "... de la plus grande liberté dans la pratique du culte musulman" (Article 2 of Appendix 2) and, *second*, the right of the populations to contribute their "conseils" during the "préparation" of the laws and regulations by which "votre pays sera régi" (preamble to Appendix 1). It is quite clear that this was an allusion to the laws which were to be promulgated by Italy with respect to Libya, in the preparation of which a committee consisting partly of "notables indigènes" was supposed to participate (Appendix 2 to the Treaty, Article 4). It also constituted a recognition by Italy that the peoples enjoyed a certain autonomy. And in the southern regions, certainly, where Ottoman control had been exercised in conjunction with the Senoussi, it implied a recognition by Italy of the title of the indigenous tribes led by the Senoussi to their own territory.

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[177] Article 2 of the public Treaty contained in Appendix 4.

5.137 In sum, the "autonomy" in question represented in substance an indirect undertaking on the part of Italy bearing on the obligation of Italy in administering Tripolitania and Cyrenaica to take account of the wishes of the inhabitants and to respect their customs and religion in its administration of these provinces.

5.138 The public Treaty provided for by Appendix 4 laid down the modalities of the Ottoman withdrawal from Tripolitania and Cyrenaica in favour of Italy. Italy, in turn, undertook to withdraw from the Ottoman territories which it had occupied during the war - which in fact it did not do, claiming that Turkey had not completely removed itself from Libyan territory. Here again, there is no definition of the extent of the Libyan territory from which the withdrawal was to take place. However, such territory could have been no different from that which was legitimately subject to the sovereign rights of the Ottoman Empire at the beginning of the war and inhabited by peoples who were under Ottoman sovereignty.

(ii) The Granting of Amnesty

5.139 The unilateral measure that Article III of the secret Treaty of 1912 required Italy to take (implemented on 17 October 1912 by Royal Decree) concerned the amnesty that was to be granted and that defined the "autonomy" which the population in question were to enjoy. Appendix 2 laid down the precise extent of such "autonomy", including a reference to the "souveraineté pleine et entière du Royaume d'Italie" over Libya, which had been proclaimed by the Italian law of 1912 mentioned above[178].

5.140 The wording of Appendix 2 calls for three observations:

First, the Porte, indirectly, by the very acceptance of the existence and contents of this Appendix, acknowledged in substance what it had refused to acknowledge "formally" in the preamble[179]: that the sovereign rights of Turkey over Tripolitania and Cyrenaica were thenceforward transferred to Italy. However, as has been seen (and as will be discussed below), the Porte was to argue differently, taking the view that title to sovereignty over Libya remained with Turkey, which had transferred to Italy no more than the exercise of such sovereignty.

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[178] See, para. 5.128, above.

[179] The preamble is quoted in part in para. 5.130, above.

Second, the territorial scope of the sovereign rights transferred to Italy could be no different than that which had previously defined such rights enjoyed by the Ottoman Empire.

Third, Italy accepted, nonetheless, that full Italian sovereignty would be exercised only within the limits and upon the conditions which had been laid down, i.e., that it would respect two sets of undertakings: (i) those in favour of the inhabitants of Tripolitania and Cyrenaica, whose "autonomy" (as defined above) was acknowledged; and (ii) those in favour of the Porte, certain of whose rights had been continued in force under various provisions of the Treaty, in particular with respect to the appointment of the Sultan's representative and the Cadi[180].

5.141 It is appropriate to mention again that nowhere in the Treaty of Ouchy is there any precise definition of the limits of the territories that were acknowledged by the Porte as being thereafter subject to the "nouvelles lois". But it is clear that these territories were those over which the Porte had "droits souverains" at the time of the war, rights that certainly could not be reduced or in any way prejudiced by previous agreements between third parties, such as between Great Britain and France. It was those sovereign rights, with their territorial scope at that time, whose transfer to Italy was acknowledged by the Treaty of Ouchy, subject to the three limitations just mentioned: the maintenance of the authority of the Sultan over the religious and personal aspects of the lives of the inhabitants (through the Cadi); the protection of Ottoman interests in the country (through the Sultan's representative); and the right of the inhabitants to participate in the governing of Libya. Moreover, the sovereign rights of the Ottoman Empire, which the Treaty transferred to Italy, applied not only to the Ottoman territories (not specifically defined) but also to the Libyan peoples ("habitants de la Tripolitaine et de la Cyrénaïque"), whose autonomy Italy had undertaken to respect in governing them. Thus, Italy succeeded the Porte in administering Libya in a dual sense: as to its territory and as to its peoples. Territorially, the extent of Libya to be administered by Italy could only have been that over which Ottoman power was effectively and legitimately exercised at the moment of succession. In so far as title to territory had been held by the Ottomans *jointly* with the peoples, Italy succeeded only to a *joint* title. The peoples to be governed comprised the inhabitants of the regions to which the *Firman* has been addressed.

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[180] Thus, three components of sovereignty were carved out of the sovereignty transferred to Italy: (i) the Sultan retained a personal representative in Libya; (ii) the Sultan approved the Cadi, who acted as judge in respect to all religious and personal aspects of the lives of the Muslim inhabitants; and (iii) the inhabitants participated in the governing of Libya.

5.142 As has already been mentioned, Turkey was to claim subsequently that the Treaty of Ouchy had in no way resulted in the loss of its sovereignty over Libya: to the contrary, the granting of autonomy to the Libyan populations was an expression of the Porte's sovereign rights and implied that they were maintained, in the absence of any explicit clause relating to the abandonment of such rights. Whatever one might think of the subtleties of this theory, it should be noted immediately that France never adopted the Ottoman position. On the contrary, France (like the other European powers) hastened to recognize fully the sovereignty of Italy over the two former Ottoman provinces in accordance with Italy's wishes[181]. Although neither France's recognition of Italy's sovereignty, nor the Franco-Italian Agreement of 28 October 1912, touched upon the question of the boundaries of Libya[182], the fact remains that as a result of France's recognition of Italian sovereignty - made without the slightest reservation or restriction - France acknowledged for all purposes the succession of Italy to the Porte's sovereign rights over Libya, such as they existed in 1911-1912 (and therefore also their territorial and personal extent).

5.143 The correctness of these observations is strongly reinforced by the fact that France's attitude (like that of Great Britain) remained absolutely consistent; for following the events of 1911-1912, France acknowledged that sovereignty over Libya had been transferred in full to Italy, whatever may have been the correct interpretation of the Treaty of Ouchy in the relations between Italy and Turkey. Furthermore, France and the United Kingdom did not hesitate to go even beyond what was provided for by the letter of the Treaty. For both

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[181] *See*, para. 5.117, *et seq.*, above.

[182] *See*, para. 5.119, above.

States accepted the inclusion in the secret Treaty of London of 1915 of a provision (Article 10) that read as follows:

> "L'Italie sera substituée en Libye aux droits et privilèges appartenant actuellement au Sultan en vertu du Traité de Lausanne."

5.144 In other words, even if it might have been possible to sustain the theory that the Treaty of Ouchy created a certain form of shared sovereignty between Italy and Turkey over Libya (or even that it left Turkey with the title to such sovereignty and transferred only its exercise to Italy), it must be admitted that this theory was not adopted by either France or the United Kingdom. For after having recognized Italian sovereignty in Libya, these two States made the undertaking towards Italy in 1915 to consider that any form of sharing (however limited) was to cease in favour of Italy. It was clearly full Italian sovereignty over Libya that was recognized in this way. Equally recognized was the fact that Italy thereafter had all the rights in Libya that had belonged to the Ottoman Empire before the war. This recognition that the rights that were transferred were full sovereign rights could only imply, by the very fact that no reservations were made, that it was recognized that such rights covered the whole of the Libyan territory and the entire Libyan population previously subject to Ottoman sovereignty.

5.145 It is appropriate here to recall that in the Treaty of Lausanne of 24 July 1923 the matter of State relations between Italy and Turkey was definitively resolved: Turkey solemnly recognized that any residual sharing of rights between the two States was thenceforth abolished in favour of Italy[183]. Article 16 of the Treaty provided as follows:

> "La Turquie déclare renoncer à tous droits et titres, de quelque nature que ce soit, sur et concernant les territoires situés au-delà des frontières prévues par le présent Traité et sur les îles autres que celles sur lesquelles la souveraineté lui est reconnue par ledit Traité, le sort de cest territoires et îles étant réglé ou à régler par les intéressés ... ."

More specifically, although safeguarding the spiritual aspects of the Muslim religious authorities (in accordance with Article 27), Article 22, established that -

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[183] Treaty of Lausanne of 24 July 1923, International Accords and Agreements Annex, No. 20.

> "... la Turquie déclare reconnaître l'abolition définitive de tous droits et privilèges de quelque nature que ce soit, dont elle jouissait en Libye en vertu du Traité de Lausanne du 18 octobre 1912, et des Actes y relatifs."

To this was added the following, in the second paragraph of Article 29:

> "Les ressortissants libyens seront à tous égards soumis, en Turquie, au même régime que les autres ressortissants italiens."

In short, in 1923 Turkey recognized, without reservation, that thenceforth Italy had full and complete sovereignty over such Libyan territories as fell under Ottoman sovereignty prior to 1912, as well as over all the inhabitants thereof (who were accepted as being considered Italian citizens). Thus, all the ambiguities and compromises of the Treaty of Ouchy were eliminated in favour of Italy, whose legal status as successor to Turkey as to all rights and titles concerning Libya received full recognition. It should be noted that this recognition was not only accorded by Turkey; for the 1923 Treaty was signed by a number of other Powers, including Great Britain and France. These Ottoman rights and titles inherited by Italy coexisted with the title of the indigenous peoples, whose autonomy granted by the Sultan, had been acknowledged by Italy.

5.146 Returning now to the specific matter of the southern limits of Libyan territory, it has been seen that they had not been determined by any previous international boundary agreement and that the agreements relating to the spheres of influence of France and the United Kingdom could in no event have had the slightest effect on the Porte, who did not participate in them and who had protested vigorously against them. Consequently, the same situation of indetermination was transferred in 1912 to Italy, as successor State to Turkey. Only an undertaking made previously by Italy in favour of another interested State, by which Italy would have been bound with respect to the determination of the boundaries of Libya (in the event of the future conquest of the territory concerned), could have been invoked by such other State against Italy after 1912, unless there had been a change in the relevant circumstances. However, as has been seen, the Franco-Italian Accords of 1900-1902 implied no recognition by Italy in favour of France of a southern boundary to Tripolitania and Cyrenaica (which in any event had never been drawn), for several reasons, which it is useful to repeat again: (i) because what Italy had recognized was the existence of a limit to the French sphere of influence to the north of Lake Chad, and not a boundary between French and Ottoman territories; and (ii) because this recognition in any event related only to a line concerning the limits of Tripolitania exclusively, which had nothing to do with the line drawn in 1899 - the famous southeast line described in Article 3 of the 1899 Declaration that was to be the basis of subsequent French claims, and is now apparently the basis of Chad's claims.

5.147 As has been seen, the succession of Italy to the Ottoman Empire insofar as sovereignty over Libya was concerned - which France had acknowledged to be full sovereignty - clearly covered the whole of the Libyan territory and the entirety of the Libyan peoples over which the sovereign power of the Ottoman Empire had, prior thereto, been legitimately exercised. It could only have concerned all the rights, titles and claims that were the Ottoman Empire's with respect to Libya. After the 1912 Treaty of Ouchy, Italy found itself in the same juridical situation as the Ottoman Empire and, thus, had the right to negotiate agreements for the delimitation of the boundaries of Libya with its neighbouring States and the right to invoke in such negotiations the juridical titles that had been transferred to it by the Porte.

5.148 The following conclusions may be drawn from the above analysis:

> (i) In the 1912 Treaty of Ouchy, the Ottoman Empire transferred to Italy the right to exercise sovereignty over Libya, subject to two sets of limitations: first, those in favour of the local population, whose "autonomy" (albeit in a limited form) was guaranteed; and second, those in favour of the Porte. This succession covered, of course, all sovereign rights, all legal titles and all claims that prior thereto had belonged to the Ottoman Empire in respect to Libya in respect to both its territory and its peoples. The territorial extent of Libya could only correspond to those territories over which Ottoman sovereign power had been effectively and legitimately exercised at the moment of succession. The Libyan peoples corresponded to all the inhabitants of Tripolitania and Cyrenaica to whom the Sultan's Firman had been addressed.
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> (ii) France (and the Great Britain) repeatedly acknowledged that in 1912 Italy succeeded the Ottoman Empire not only in the exercise of full and entire sovereignty over Libya but also to the Ottoman Empire's full title and rights. France (and Great Britain)

made no reservations with respect to this acknowledgement, in particular of a territorial nature.

(iii) The Libyan territory that thus became subject to Italian sovereignty could only be the same as the territory over which Ottoman sovereignty had previously been legitimately exercised; consequently, any agreement with respect to the delimitation of Libya's boundaries that was binding upon the Ottoman Empire prior to 1912 would be binding upon Italy after that date.

(iv) Conversely, any international act that might have had any influence whatsoever upon the extent of Libyan territory, and that was unopposable to the Ottoman Empire before 1912, remained unopposable to Italy as the successor State after that date: this is the case, in particular, with the Anglo-French Declaration of 1899.

(v) After 1912, it might have been possible to oppose to Italy any previous agreement by which it might have undertaken in advance to accept a given delimitation of Libya's boundaries, in the event that it subsequently acquired sovereignty over Libya (as did occur in 1912); however, this situation did not arise, since the Franco-Italian Accords of 1900-1902 were exclusively concerned with zones of influence and in any event did not relate to the boundaries of the Libyan territory east of Toummo. By failing to express any reservation at all as to Italy's accession to the full rights and titles of the Ottoman Empire with respect to the territory and peoples of Libya, France acknowledged that the Accords of 1900-1902, which in no way were binding on the Ottoman Empire, had not affected the Ottoman rights and titles so transferred to Italy.

(vi) The wholly indeterminate nature of the southern boundaries of Libya in 1912, at the time of Italy's acquisition of sovereignty, entitled Italy, in its subsequent relations with other States in order to arrive at definitive boundaries, to invoke all the juridical titles that had belonged to the Porte before 1912.

(vii) Since, as will be demonstrated by what follows, subsequent to 1912 no international act established any southern boundary of

Libya east of Toummo, it is evident that in establishing this boundary there must be taken into account the legal titles that were transferred from the Ottoman Empire to Italy and, thereafter, from Italy to Libya. The legal titles pertinent to determining the southern extent of Libya apply to the entire territory over which the sovereign power of the Ottoman Empire may be found to have been legitimately exercised as well as to all the peoples whose autonomy Italy undertook to respect.

5.149 Finally, in its dealings with the Ottoman Empire in 1911-1912, and in particular in its acceptance, and even scheduling, of negotiations to delimit the southern boundary with the Ottoman Empire, France acknowledged that such a boundary had not been established. Similarly, after the 1912 Treaty of Ouchy, when France entered into negotiations with Italy for the same purpose - negotiations which the onset of World War I prevented - it acknowledged for a second time the absence of a boundary there. Thus, it is not the 1900-1902 Accords that bear on the question but rather France's conduct in the period 1911-1914. For France recognized, first to the Ottomans, then to the Italians, that Libya's southern boundary remained to be determined.

SECTION 9. World War I; the Secret Treaty of London of 1915; and the Deliberations of the Colonial Commission in 1919 over African Concessions to Italy

5.150 Italy entered World War I on the side of the Allies under the terms of the secret Treaty of London of 26 April 1915[184]. This was a complex matter for Italy, which was at the time a member of the Triple Alliance. On the other hand, Turkey, with which Italy had just ended a war, had recently entered the war on the side of the Central Powers. Meanwhile, Italy's relations with France and Great Britain had been improving. The Treaty of London settled the issue.

5.151 Italy encountered great difficulties during the war with its new colonies of Libya and Cyrenaica, and its forces withdrew to Tripoli and a few other localities along the coast. This was in large part due to the organized opposition of the indigenous peoples and supported by the Turks. In 1917, the first of a series of agreements with the Senoussi was entered into[185]. With the War's end, the Allies turned to how to divide up Germany's African empire. The Treaty of Versailles of 26 June 1919 had stripped Germany of its colonies, but Italy did not share in the distribution of mandates. So the provisions of the secret Treaty of London took on a special importance.

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[184] Secret Treaty of London of 26 April 1915, International Accords and Agreements Annex No. 12.

5.152 The Articles of the Treaty relevant to the African colonies were Articles 10 and 13. Article 10, which has been discussed in the previous Section, provided as follows:

> "All rights and privileges in Libya at present belonging to the Sultan by virtue of the Treaty of Lausanne are transferred to Italy[186]."

The English and French texts of Article 13 are set out below:

> "In the event of France and Great Britain increasing their colonial territories in Africa at the expense of Germany, those two Powers agree in principle that Italy may claim some equitable compensation, particularly as regards the settlement in her favour of the questions relative to the frontiers of the Italian colonies of Eritrea, Somaliland and Libya, and the neighbouring colonies belonging to France and Great Britain."
>
> "Dans le cas où la France et la Grande Bretagne augmenteraient leurs domaines coloniaux d'Afrique aux dépens de l'Allemagne, ces deux Puissances reconnaissent en principe que l'Italie pourrait réclamer quelques compensations équitables; notamment dans le réglement en sa faveur des questions concernant les frontières des colonies italiennes de l'Erythrée, de la Somalie et de la Libye et des colonies voisines de la France et de la Grande Bretagne."

When the Treaty's existence became known after the War, a number of versions of the text of Article 13 were in circulation. However, the above are the authentic texts[187].

5.153 Article 10 dealt with Italy's rights in Libya. Article 13 concerned compensation to Italy. Thus, Article 13 went beyond the recognition of Italy's rights and was aimed at giving Italy something in addition to its rights in the form of equitable compensation, particularly by the resolution in Italy's favour of questions as to the frontiers of the colonies, which included of course the Libyan frontier.

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[185] This story and the conclusions to be drawn from it are dealt with in Section 13 below.

[186] The French text is set out in para. 5.143, above.

[187] See, International Accords and Agreements Annex, No. 12. Apparently, the text was first released in 1917 by the Bolsheviks in the course of exposing various secret agreements entered into by Imperial Russia. The translation appearing in Izvestia was faulty.

5.154 Before looking at the record of the post-War discussions over how to compensate Italy under Article 13, the Article's text should be examined closely. Italy's claim to compensation under the Articles was, first of all, conditional: it arose if England and France increased their colonial possessions at Germany's expense. On 7 May 1919, the Supreme Allied Council determined that this condition had been satisfied and that Italy was eligible for compensation under Article 13[188].

5.155 The second point about Article 13 is that Italy's claim to equitable compensation was, "notamment" (particularly), to be satisfied "dans le réglement en sa faveur des questions concernant les frontières" of the Italian colonies of Eritrea, Somalia and Libya and the neighbouring French and British colonies, or in the words of the English text "as regards the settlement in her (Italy's) favour of the questions relative to (these) frontiers". Other texts that had been circulating were broader in scope. For example, the following, incorrect version was made public in Italy in 1918:

> "Art. 13. - Dans le cas d'une extension de possessions coloniales françaises et britanniques en Afrique, aux dépens de l'Allemagne, la France et la Grande Bretagne reconnaissent, en principe, à l'Italie, le droit de demander pour elle-même certaines compensations sous la forme d'une extension de ses possessions en Erythrée, dans le pays des Somalis, en Libye et dans les districts coloniaux limitrophes des colonies françaises et britanniques[189]."

During the ensuing negotiations over how to compensate Italy, even on the basis of the correct text, the Italian Government took a broader view of how Article 13 should be interpreted and applied than did the French and English. However, the correct text is of particular interest in the light of the history and analysis recounted earlier in this Memorial of the various agreements that concerned the boundaries of Libya. For compensation to Italy was to consist mainly of resolving in Italy's favour the boundary questions between Libya (and the other two Italian colonies) and the neighbouring French and British colonies. This particular language of Article 13, thus, brought out two points: first, that at the time there were certain boundary questions to be resolved; and second, that Article 13 did not concern merely gratuitous offers of compensation, but rather the resolution of those existing boundary questions in Italy's favour.

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[188] See, Records of Meetings of 15 May 1919, French Archives Annex, p. 284.

[189] BCAF, 1918, p. 275. (A copy of this page is attached as Exhibit 41.)

5.156 It was well known what these boundary questions were insofar as the frontiers of Libya were concerned. France and Italy had recently broken off negotiations aimed at determining the boundaries along Libya's frontier south of Ghadamès. As inheritor of the Ottoman Empire's territorial rights in North Africa, Italy had assumed Turkey's place in attempting to determine Libya's southern frontier, concerning which the negotiations started between France and the Ottoman Empire had been brought to a halt by Turkey's defeat in 1912 and the Treaty of Ouchy.

5.157 At its meeting of 7 May 1919, the Supreme Allied Council appointed a Colonial Commission to consider Italy's claim under Article 13, with Lord Milner as Chairman and the French Minister of Colonies, Henry Simon, and M. Crespi representing France and Italy, respectively, together with their staffs. Four meetings of the Colonial Commission were held in Paris: on 15, 19, 28 and 30 May 1919[190].

5.158 There had been a good deal of thought and study given by Italy to its territorial rights and the question of compensation under Article 13 even before the end of the War[191]. A discussion had taken place in Paris on 29 March 1916 between senior members of the Foreign Ministries of France and Italy over the Ghadamès - Ghat sector of the Libyan frontier, but the talks ultimately led nowhere, although at the outset Italy thought that it had obtained agreement from the French participants to include the caravan routes in this sector within Libyan territory. The Italian Colonial and Foreign Ministries thereupon formulated alternative strategies consisting of a maximum and a minimum position[192]. The maximum position was to include within the Tripolitanian hinterland the following:

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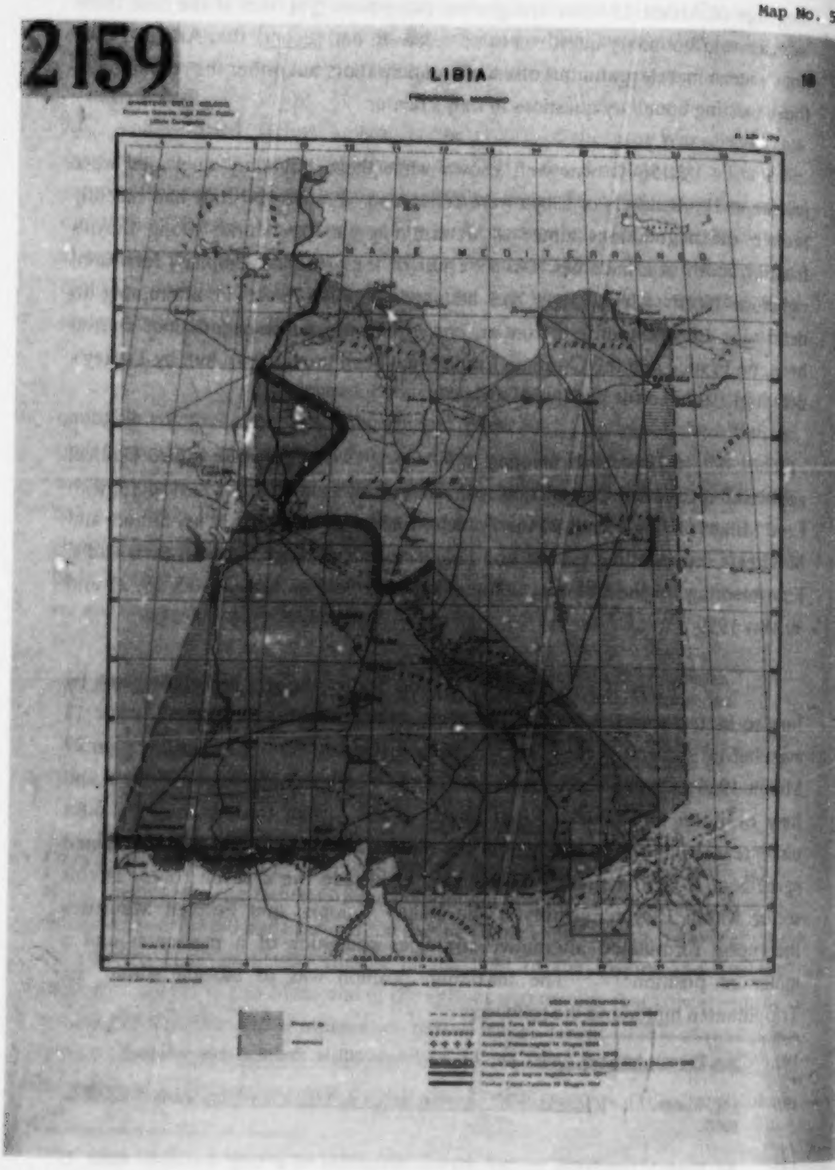
[190] See, French Archives Annex, pp. 284-295, for the official record of these meetings.

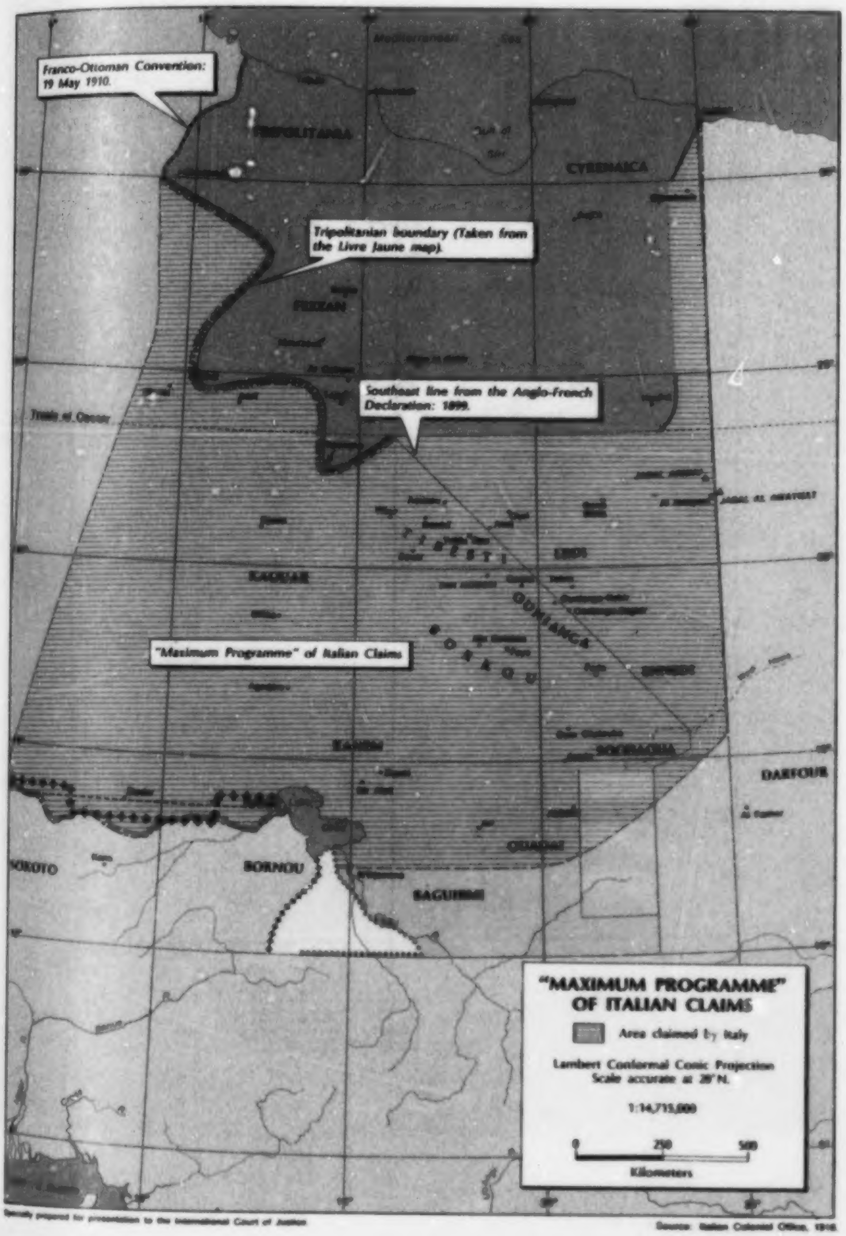
[191] See, Miège, J.L.: L'Impérialisme Colonial Italien de 1870 à nos Jours, Paris, S.E.D.E.S., 1968.

[192] An English translation of the relevant paragraphs of a long document dated 15 November 1916 from the Ministry of the Colonies to the Ministry of Foreign Affairs illustrating the Italian positions is contained in Italian Archives Annex, p. 22.

Map No. 5



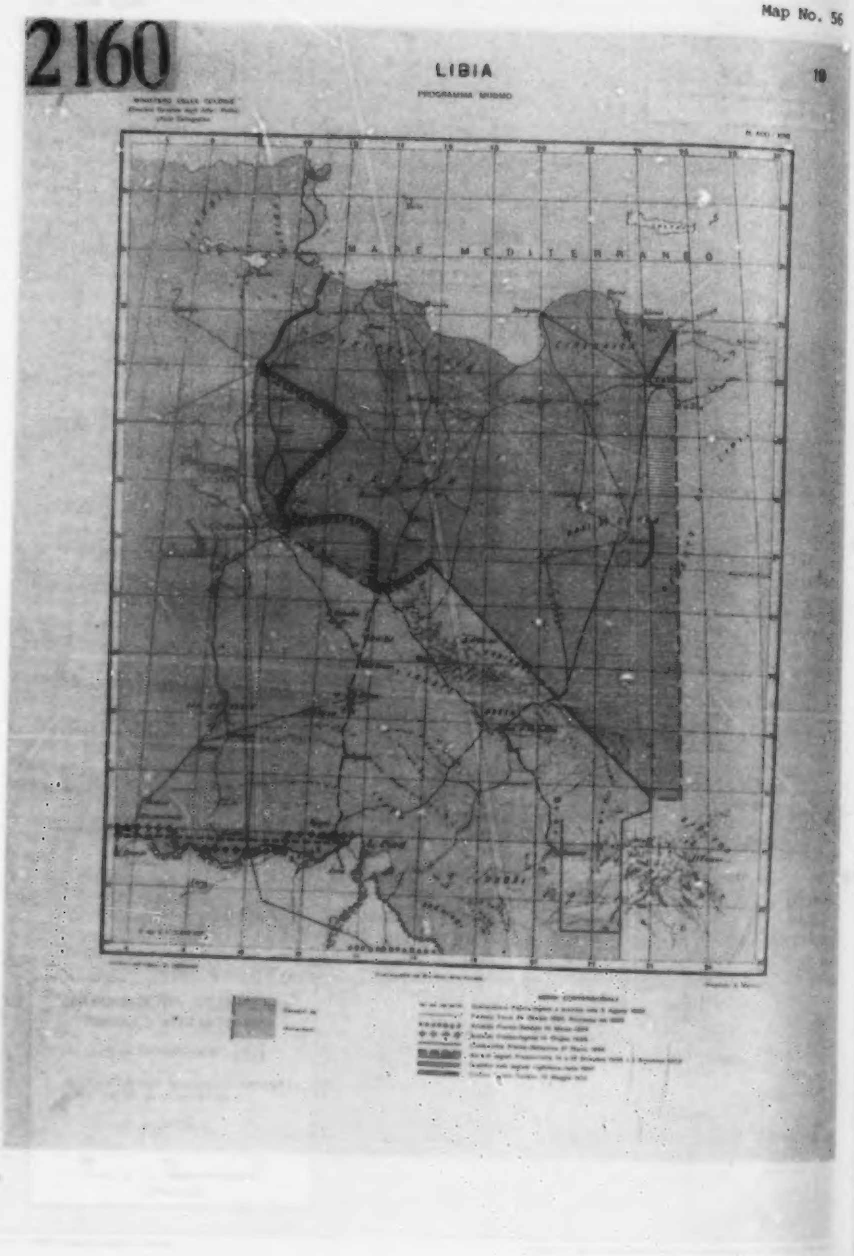
Map No. 55


Mediterranean Sea
Franco-Ottoman Convention: 19 May 1910.
TRIPOLITANIA
Gulf of Sirt
CYRENAICA
Tripolitanian boundary (Taken from the Livre Jaune map).
FEZZAN
Southeast line from the Anglo-French Declaration: 1899.
Tropic of Cancer
JABAL AL AWAYNAT
TIBESTI
ERDI
KAOUAR
OUNIANGA
BORKOU
ENNEDI
"Maximum Programme" of Italian Claims
KANEM
DARFOUR
OUADAI
SOKOTO
BORNOU
SAGUIRMI
"MAXIMUM PROGRAMME" OF ITALIAN CLAIMS
Area claimed by Italy
Lambert Conformal Conic Projection
Scale accurate at 28°N.
1:14,715,000
0
250
500
Kilometers

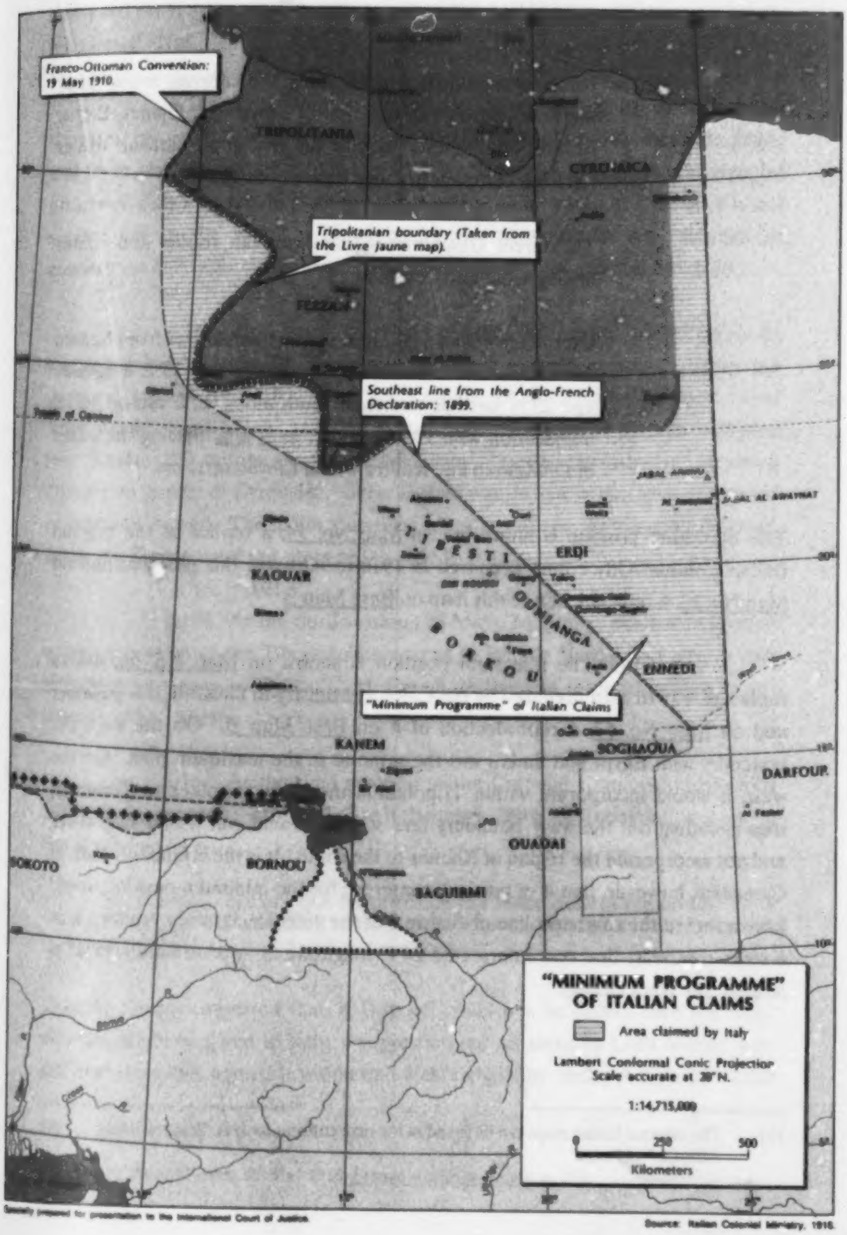
Specially prepared for presentation to the International Court of Justice

Source: Italian Colonial Office, 1916

Map No. 56



Map No. 57



"MINIMUM PROGRAMME" OF ITALIAN CLAIMS

Franco-Ottoman Convention: 19 May 1910.

Tripolitanian boundary (Taken from the Livre jaune map).

Southeast line from the Anglo-French Declaration: 1899.

"Minimum Programme" of Italian Claims

▨ Area claimed by Italy

Lambert Conformal Conic Projection
Scale accurate at 20°N.

1:14,715,000

Specially prepared for presentation to the International Court of Justice.

Source: Italian Colonial Ministry, 1916.

- The northern part of the Chad basin, including Kanem and Ouadaï;

- Places occupied by France along the caravan routes after the date of Italy's occupation of Libya· i.e., Djanet, Bilma, Borkou and Tibesti, so that the five great caravan routes were left completely under Italian control;

- The direct Ghadamès - Ghat caravan routes and routes linking Ghat and Toummo;

- On the Cyrenaican frontier, the line would run from Sollum on the Mediterranean to the intersection of 25°E longitude and 25°N latitude and then south along 25°E almost to its intersection with 15°N latitude, inter alia, placing the oases of Djaraboub and Koufra within Libyan territory.

This maximum position is illustrated on Map No. 54, a replica of the original Italian Colonial Office map prepared in 1916 to illustrate this position; and on Map No. 55, a reproduction of this map on Base Map B[193].

5.159 The minimum position is shown on Map No. 56, also a replica of a 1916 map prepared by the Colonial Ministry to illustrate this position; and on Map No. 57, a reproduction of it on Base Map B. On the east, the boundary with Egypt and Sudan was the same as in the maximum plan. On the west, it would incorporate within Tripolitania the caravan routes to Toummo, thus rounding out the wavy boundary line of Tripolitania, but would stop there and not incorporate the region of Kaouar to the south. It is the boundary south of Cyrenaica, however, that is of particular interest; for the minimum position would have adopted the southeast line of Article 3 of the 1899 Declaration, treating it as a strict southeast line that intersected 24°E longitude at approximately 15°45'N latitude (at Wadi Howa).

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[193] The original Italian maps can be found in the map collection of the "Istituto Italo-Africano" of Rome.

5.160 Thus, when the first session of the Colonial Commission convened on 15 May 1919, Italy's representative had in his pocket some carefully considered ideas.

5.161 Lord Milner opened the first meeting by calling on M. Crespi to set out Italy's claims under Article 13. Crespi produced certain maps, and from the official record of the 15 May session it would appear that he presented Italy's minimum position, although the claim south of Cyrenaica is not spelled out in the report. However, Italy's main interest was directed at concessions in Eritrea, Somaliland (which concerned Djibouti) and Jubaland.

5.162 At the next meeting (19 May), France was called on for its reaction to Italy's claims. M. Simon rejected the proposal concerning Djibouti but declared himself receptive to a rectification of the western boundary of Tripolitania. Lord Milner said that Great Britain (which had already indicated that Koufra fell within the ambit of Libya[194]) was receptive to including Djaraboub as part of Cyrenaica. Great Britain was said to be ready to offer some of Jubaland as well. The major stumbling block at this session was over Djibouti, which the French were not prepared to cede to Italy.

5.163 At the third session (28 May), M. Simon made a new offer: to give a portion of the Tibesti to Italy so as to include Bardaï, but only if Italy abandoned its claim to Djibouti. M. Crespi declined to respond in view of the absence of his experts.

5.164 At the final meeting of the Colonial Commission (30 May 1919), Italy generally accepted Great Britain's offer of Jubaland; but as to France's new offer:

> "M. Crespi ... déclare que les offres de la France dans la région du Tibesti ne lui semblent pas présenter pour son pays un réel intérêt[195]."

Then M. Crespi suggested that, if Djibouti could not be ceded, then the Togo mandate might be given to Italy, a suggestion cut off short by Lord Milner, who said that were this agreed it would end Italy's eligibility under Article 13. Lord

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[194] See, para. 5.218, below.

[195] See, Final Meeting, 30 May 1919, French Archives Annex, p. 293.

Milner proposed that the work of the Commission be ended and a final report be prepared in the light of the evident impossibility of reaching an agreement.

5.165 The Commission issued its final report on 6 June 1919 recounting the discussions and the results achieved. It mentioned Italy's argument for a broad reading of Article 13 so that Italy would receive proportionate compensation. It recalled the French offer of a part of Tibesti so as to include Bardaï, and Italy's rejection of it. The report's summary indicated that Italy did not accept the part of Tibesti offered by France and withdrew its proposal relating to the western and southern boundaries of Libya -

> "... préférant que la question coloniale africaine restât ouverte entre les deux Gouvernements, Français et Italien."

France indicated that it -

> "... accepte la rectification de la frontière occidentale de la Libye, que lui avait primitivement demandée et elle maintient l'offre qu'elle a présentée à l'Italie en vue de rechercher les bases d'une delimitation nouvelle dans la région du Tibesti[196]."

5.166 Then, on 16 July 1919, Italy proposed a new approach, which was presented by the Italian delegation to the Peace Congress[197]. The Italian note summarized the previous offers and responses; and it pointed out how Italy had argued unsuccessfully that its compensation should be based on the idea of proportionality. The new proposals advanced by Italy concerning the Libyan frontier were these:

- The western frontier of Libya would be fixed so that the principal caravan routes between Ghadamès, Ghat and Toummo would fall within Libyan territory;
- The entire territories of Tibesti, Borkou and Ennedi, whose boundaries should be delimited geographically and ethnically, would be agreed to lie on the Libyan side of the frontier.

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[196] Final Report of the Colonial Commission, 6 June 1919, in Italian Archives Annex, p. 29.

[197] See, Italian Proposal of 16 July 1919, French Archives Annex, p. 296.

The rest of the proposal related to Ethiopia, the construction of railroads and Tunisia.

5.167 The internal reaction of the Quai d'Orsay to the new Italian proposal was (i) to be pleased that the claim to Djibouti had been dropped, (ii) to accept the proposal as to the Libya-Algeria boundary so as to leave the caravan routes in Libyan territory, but (iii) to reject the proposal as to the regions of Borkou, Tibesti and Ennedi as exceeding the scope of compensation envisaged by Article 13. The stage had thus been set for the Franco-Italian Accord of 12 September 1919.

SECTION 10. The 1919 Agreements: Italy's Protest Against the Anglo-French Convention of 8 September 1919; and the Differing Positions of Great Britain and France

(a) Franco-Italian Accord of 12 September 1919

5.168 The questions concerning the boundary between Libya and Algeria were dealt with in an exchange of letters that constituted the Accord of 12 September 1919 (also known as the Pichon-Bonin Accord)[198]. The delimitation carried out by the Accord is illustrated on Map No. 58. Attributed to Italy (that is, to Libyan territory) were two oases (El-Birkat and Fehout) and the caravan route joining Ghadamès and Ghat, whose general description was made subject to on-the-spot verification (Map No. 59). The Accord also set out in general terms the Tripolitania - Algeria boundary between Ghat and Toummo. It was agreed to demarcate this boundary as soon as possible.

5.169 The second paragraph of Bonin's letter merits particular attention. It reads as follows:

> "Par sa décision du 7 mai dernier, le Conseil Suprême des alliés ayant reconnu que le gouvernement italien était fondé à réclamer le bénéfice de l'article 13 du traité de Londres, le gouvernement de S.M. le roi d'Italie et le gouvernement de la République se sont déjà mis d'accord sur les points suivants, tout en réservant d'autres points pour un prochain examen ...[199]."

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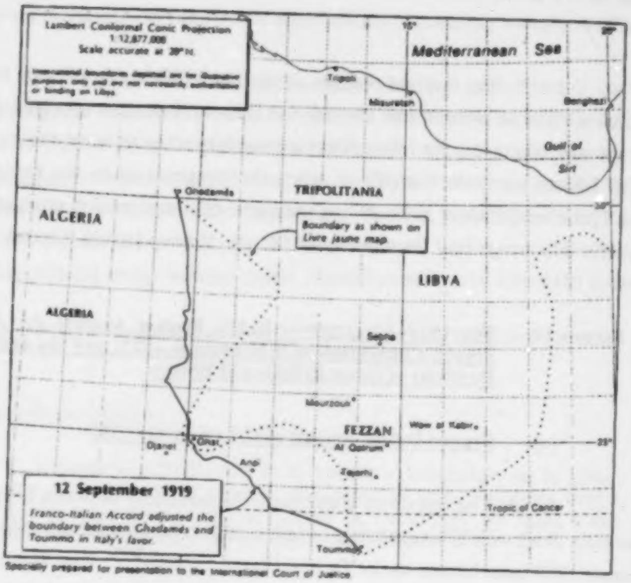
[198] The Franco-Italian Accord of 12 September 1919, International Accords and Agreements Annex, No. 18.

[199] Emphasis added.

Map N°58



Lambert Conformal Conic Projection
1:12,877,000
Scale accurate at 30°N.

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya

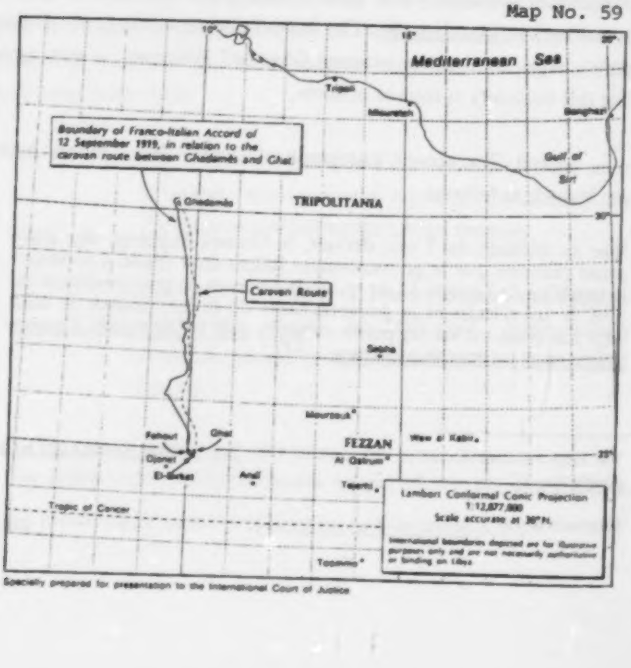
Boundary as shown on *Livre jaune* map

12 September 1919

Franco-Italian Accord adjusted the boundary between Ghadamès and Toummo in Italy's favor.

Specially prepared for presentation to the International Court of Justice

Map No. 59



Boundary of Franco-Italian Accord of 12 September 1919, in relation to the caravan route between Ghadamès and Ghat.

Caravan Route

Lambert Conformal Conic Projection
1:12,877,000
Scale accurate at 30°N.

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya

Specially prepared for presentation to the International Court of Justice

This paragraph reflected the fact that the Accord was intended to resolve one of the boundary questions - the course of the frontier between Ghadamès and Toummo. As the earlier discussion of the 1900-1902 Accords pointed out, the first indication as to the course of that boundary had been contained in those Accords, in which reference had been made to the Livre jaune map that illustrated the 1899 Declaration (at least as interpreted by France). On that map, the Tripolitanian boundary appeared as a wavy line of black dashes. This line is shown on Map No. 58 (as black dots) in conjunction with the 1919 line. The delimitation of this vaguely-shown boundary had been one of the proposals advanced by Italy during the Colonial Commission's meetings, and it had been accepted in principle at the time by France. It had also been raised by Poincaré in 1912 as a boundary matter to be resolved[200] and discussed in Paris in 1916 between Italy and France[201]. Thus, Italy did not regard the agreement of France in the 12 September 1919 Accord to the delimitation of this sector of the boundary as a major new concession but rather one that had been anticipated as early as 1912.

5.170 The above-quoted paragraph of the 12 September Accord contained an important reservation (the portion underlined). These words were a clear indication that the boundary delimitation actually dealt with in the Accord was not to be regarded as in final satisfaction of France's obligations to Italy under Article 13. For the boundary agreement set out in the Accord was only the initial matter on which France and Italy "se sont déjà mis d'accord". In a speech to the Italian Chamber on 27 September 1919, explaining this Accord, the Italian Minister of Foreign Affairs, Tittoni, emphasized this point, saying that the Accord "n'est qu'une application partielle limitée de l'article 13 du pacte de Londres", and that:

> "La question du Tibesti et du Borkou, ou d'une autre compensation au lieu de ces régions, reste ouverte et sera l'objet de négociations ultérieures. En attendant, à la suite d'un échange de notes à Paris, le 12 septembre, a été sanctionnée, après une offre faite à l'Italie qui datait de quatre mois, la cession de l'oasis d'El-Barkat et de Tchout et de la région qui comprend les routes de caravanes entre Ghat, Ghadamès et Tummo. C'est là une cession utile à coup sûr, mais en somme bien peu de chose[202]."

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[200] See, para. 5.117, et seq., above.

[201] See, para. 5.158, above.

[202] For the text of Tittoni's Speech of 27 September 1919, see, BCAF, September-October 1919, pp. 259-261, Exhibit 42.

5.171 A few words from this speech of Tittoni were subsequently seized on by the French colonialists in an attempt to buttress their contentions regarding the meaning and affect of the 1900-1902 Franco-Italian Accords. For Tittoni in a chance phrase was taken to have endorsed the French view that these Accords had recognised the southeast line set out in Article 3 of the 1899 Declaration, as portrayed on the Livre jaune map, as a boundary line binding on Italy. Tittoni may have been guilty of a slight lapse, which, taken out of context, was exaggerated later in an attempt to support the contentions of the French Government concerning this boundary. Some years later, in an article published in May 1927, Tittoni responded to the arguments that the French colonialists had since then spawned. This was after he had stepped down as Foreign Minister. The article contained a thorough survey of the history of the boundary issue and an exposition of the Italian position thereon. Tittoni's article concluded as follows:

> "Il est absolument évident qu'alors que nous avons donné à l'Angleterre une quittance définitive, nous n'avons donné à la France qu'un reçu d'acompte et que nous attendons le solde pour lui abandonner notre quittance définitive[203]."

5.172 The Franco-Italian Accord of 12 September 1919 and subsequent negotiations between Italy and France leading up to the 1935 Treaty of Rome were cast within the framework of Article 13 of the 1915 Treaty of London rather than in terms of an assertion of territorial rights that Italy had inherited from the Ottoman Empire (as reflected in Article 10 of the same Treaty). This was logical for at least two reasons. First, as seen above, Article 13 itself contemplated that it would be through the settlement in Italy's favour of the questions outstanding relative to the frontiers of its colonies, in this case Libya, that Italy would principally be compensated by Great Britain and France to make up for the advantages these two Powers had obtained in Africa at the expense of Germany (in which Italy had not shared). So in seeking the settlement of these questions under Article 13, Italy was not renouncing any of its territorial rights but, rather, was seeking to have them recognized and made precise in agreements that would be binding under international law with either Great Britain or France, as appropriate. Second, the territorial rights Italy had inherited from the Ottoman Empire did not arise from conventional international agreements, and they were disputed. Therefore, Article 13 was a useful vehicle for the resolution of these "questions relative to the frontiers of the Italian colonies"; but its use by Italy implied no renunciation of the Ottoman rights and titles that Italy had inherited and that had been recognised as having passed on to Italy in Article 10 of the Treaty of London.

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[203] BCAF, May 1927, pp. 42-44. Exhibit 43.

5.173 This point leads directly to the second agreement entered into in 1919; for there Great Britain and France resolved the sort of question embraced by Article 13 not only contrary to Italy's interests but behind its back.

(b) The Anglo-French Convention of 8 September 1919

5.174 Unbeknownst to Italy, French Foreign Minister Pichon, only four days before signing the 12 September Accord with Italy, had himself signed a boundary agreement with Lord Balfour[204]. The failure of either Great Britain or France to inform Italy about this agreement would be less striking had the 8 September Convention been limited to the frontier between the A.E.F. (French Equatorial Africa) and the Anglo-Egyptian Sudan, as its title suggested[205] (the British referred to it as the "Wadaï - Darfour Convention"). But this was not the case, as will be seen.

5.175 It is quite true that the Convention's central purpose was to modify the 1899 Declaration in respect to the delimitation of the first sector of the boundary in the Ouadaï-Darfour area (Article 2 of the Declaration) by making it considerably more precise and by extending it eastward to 24°E longitude (and even to 24° 30'E if necessary). It will be recalled that the 1899 Declaration initially limited the area to be delimited between Ouadaï and Darfour to the territory lying between 21° and 23°E longitude[206]. This had left an inevitable gap between the first and second sectors, which has been discussed above and illustrated on (Map No. 47), which again appears here[207]. It will also be recalled that France had unsuccessfully attempted to achieve an extension of the eastern boundary in the Ouadai - Darfour region to 24°E longitude during the 1899 negotiations[208].

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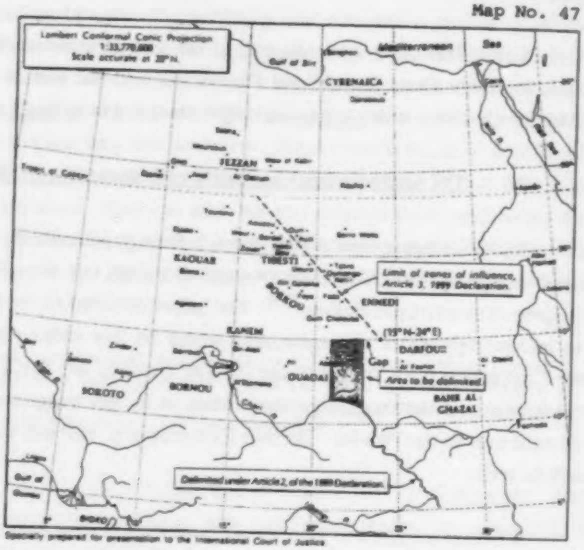
[204] For a copy of the Anglo-French Convention of 8 September 1919, see, International Accords and Agreements Annex, No. 17.

[205] "Convention supplémentaire fixant la frontière entre l'Afrique equatoriale française et le Soudan anglo-égyptian."

[206] See, para. 5.40, et seq., above.

[207] See, para. 5.42, above.

Map No. 47



Specially prepared for presentation to the International Court of Justice

5.176 The Convention of 8 September 1919 addressed the problem of the gap as well as accomplishing a detailed delimitation further south. The resulting boundary in the first sector, between 5°N latitude and the latitude of Wadi Howa (at which point the boundary turned east to the point at which Wadi Howa intersected 24°E longitude, at approximately 15°45'N latitude), is depicted on Map No. 60. It is a replica of the map issued to illustrate the 8 September Convention, although not forming an integral part of the Convention[209]. If a line is extended from the end point of the first sector of the boundary - the point of intersection of Wadi Howa and 24°E longitude (that is, at 15° 45'N latitude) - to

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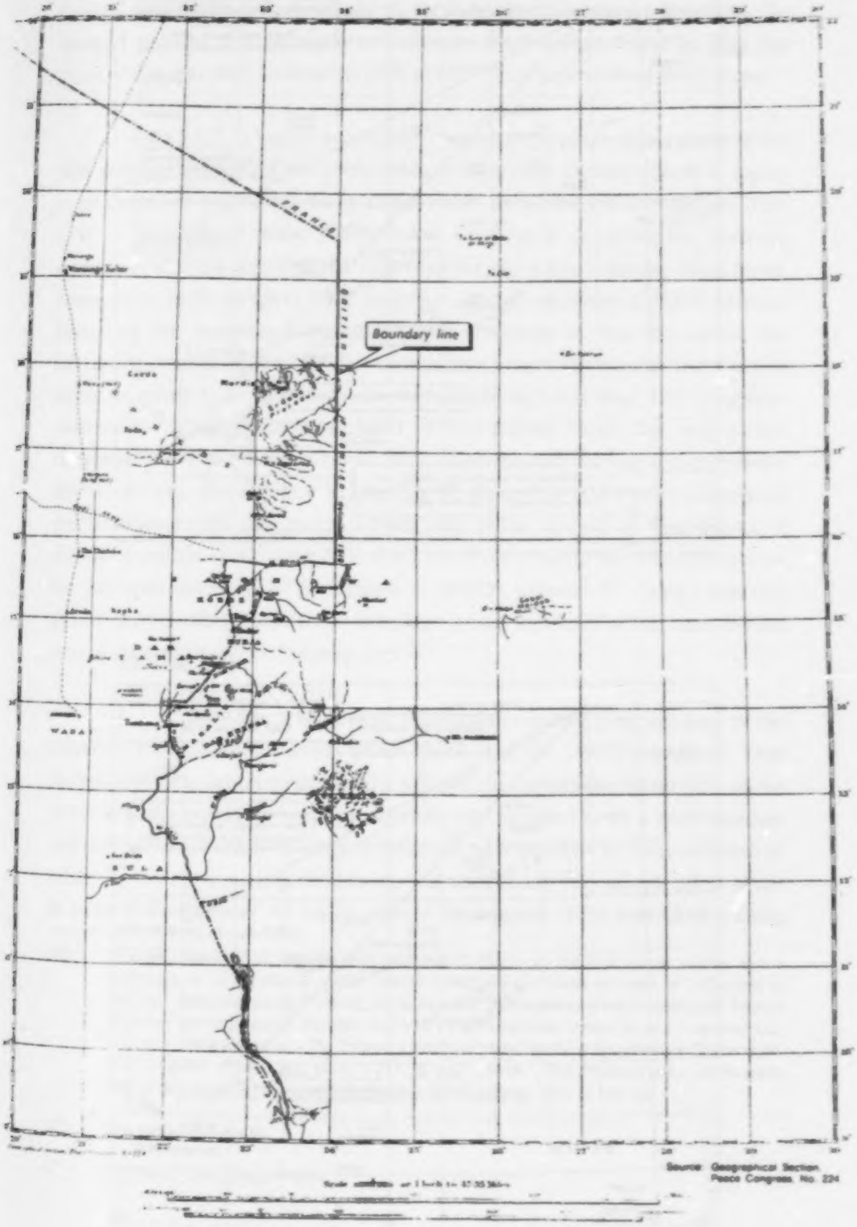
[208] Ibid.

[209] It will be noted that the map was prepared by the Geographical Section of the Peace Congress; so this boundary delimitation was accomplished within the context of the 1919 peace discussions, which makes all the more reprehensible the failure of its signatories to have observed the provisions of Article 13 of the Treaty of London.

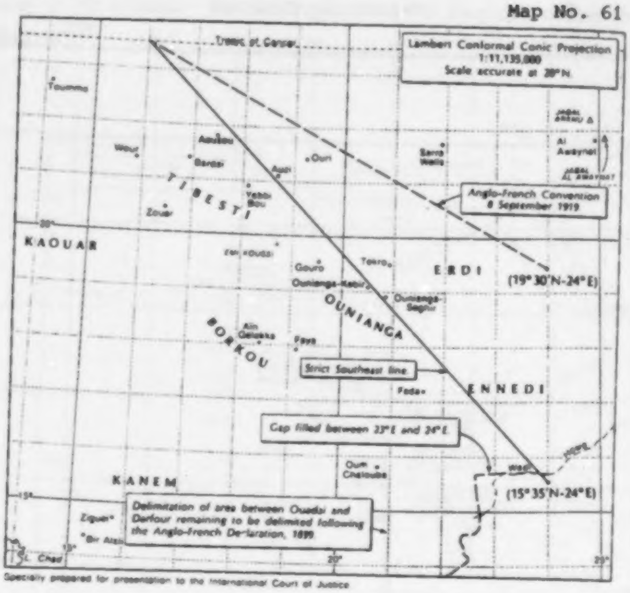
WADAI — DARFUR

Map No. 60



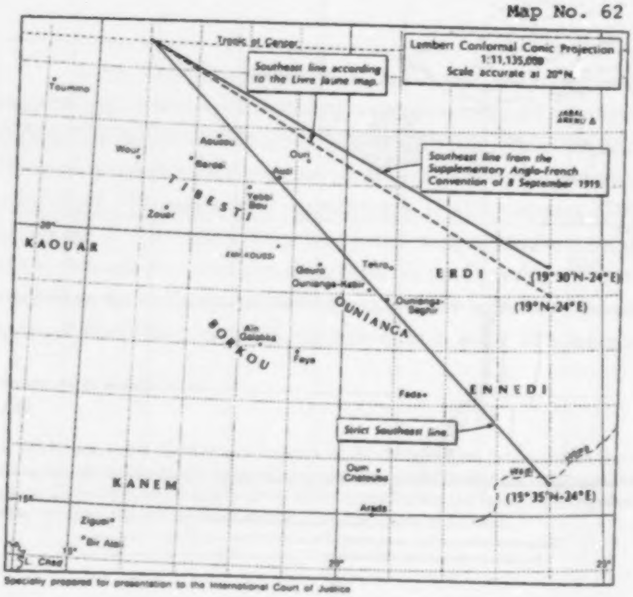
Source: Geographical Section
Peace Congress. No. 224

Map No. 61



Specially prepared for presentation to the International Court of Justice

Map No. 62



Specially prepared for presentation to the International Court of Justice

the starting point of the 1899 Declaration's second sector line at the Tropic of Cancer, such a line follows an almost exact northwest/southeast direction. To illustrate this fact, a strict northwest/southeast line has been drawn on Map No. 61. It will be seen that it intersects 24°E at 15°35'N, or just south of Wadi Howa.

5.177 Thus, to accomplish its central purpose - to supplement the 1899 Additional Declaration by expanding eastward the Ouadaï - Darfour region to be delimited and to delimit in considerable detail the entire boundary from 11°N to Wadi Howa - the 8 September Convention delimited the northern segment of the first sector of the 1899 boundary by a line following Wadi Howa eastward so as to intersect 24°E longitude, at approximately 15°45'N latitude. Extending the boundary eastward to 24°E longitude in this way solved the incongruity created by the 1899 Declaration that arose from the fact that the first sector boundary to be delimited was to run no further east than 23°E longitude, whereas the southern terminal point of the second sector line was at the intersection of a southeast line with 24°E longitude, thus leaving a gap between the two sectors. But a glance at Map No. 60 shows that in the 1919 Convention the boundary of the first sector did not stop at the latitude of Wadi Howa: it continues straight north along 24°E north to a point where a line descending from the southeast intersects 24°E longitude at 19°30'N latitude[210]. Exactly how this part of the boundary came about is another of the mysteries of this case, second only to the mystery of the "missing map"[211].

5.178 The 8 September Convention resulted from the work of the boundary commission appointed under Article 4 of the 1899 Declaration. That Article, however, expressly limited the work of the commission to the first sector of the boundary covered by Article 2, which was intended to be a real boundary and not merely the limits of zones of influence, to which Article 3 was intended to relate[212]. So the boundary commission was intended to play no role north of the latitude of Wadi Howa. An explanation of the segment of the line running along

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[210] Whether this part of the line was intended to relate to the first sector (which was a boundary) or to the second sector (which concerned the limits of zones of influence) is unclear. However, in the Protocol of 10 January 1924 signed by the English and French boundary commissioners, the line north to 19°30'N latitude is treated as a boundary and as part of the first sector. The Protocol was confirmed by the Anglo-French Declaration of 21 January 1924. See, para. 5.215, et seq., below. The Protocol and Declaration appear in International Accords and Agreements Annex, Nos. 21 and 22.

[211] See, para. 5.85, above.

[212] See, para. 5.58, et seq., above.

24°E longitude north from Wadi Howa to 19° 30'N latitude is found in the last paragraph of the 8 September Convention; but the mystery still remains as to how this paragraph got tacked on to the end of this agreement.

5.179 The text of this last paragraph is, in itself, remarkable:

> "Il est entendu que la présente convention ne modifiera en rien l'interprétation donnée à la déclaration du 21 mars 1899, d'après laquelle les termes de l'article 3 'elle se dirigera ensuite vers le Sud-Est jusqu'au 24° degré de longitude est de Greenwich (21° 40' Est de Paris)' signifient 'elle prendra une direction Sud-Est judqu'au 24e degré de longitude Est de Greenwich au point d'intersection dudit degré de longitude avec le parallèle 19° 30' de latitude'."

The effect of this "interpretation" of the 1899 Declaration - and it is not at all clear who had given the Declaration this interpretation or on what basis - was to swing the southeast line set out in Article 3 of the Declaration further north than it had already been pushed on the Livre jaune map[213]. This is demonstrated by Map No. 62. Although the second paragraph of the 8 September 1919 Convention indicated that both Articles 2 and 3 of the 1899 Declaration were to be modified by it, this change in the direction of the Article 3 line seems to be the only sense in which Article 3 was in fact modified - and by means of an "interpretation" 20 years later, at that. Diligent searches in the British and French archives have so far failed to turn up a satisfactory explanation for the mysterious appearance of this curious final paragraph. Such clues as appear in the British Foreign Office records will be mentioned in a moment; but, first, it is interesting to see what one of the leading apologists for the position of France, and now of Chad, on this question, Bernard Lanne, has had to say on the matter[214].

5.180 M. Lanne deals with the 8 September Convention in the first Chapter of his 1982 book, immediately following a discussion of the 1899 Declaration. He treats it as the correction of an error, the origin of the error being the famous "missing map". M. Lanne contends that "il n'est pas douteux cependant qu'une carte était jointe à l'accord"[215], referring to the 1899 Declaration; and to support this incorrect proposition he cites the 1902 Franco-

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[213] See, para. 5.98, above.

[214] See, Lanne, B.: Tchad - Libye, La Querelle des Frontières, Paris, Karthala, 1982, pp. 22-24.

[215] Ibid., p. 21.

Italian Accord, which he says "confirme qu'une carte était bien annexée à la déclaration de 1899". This is a fragile argument since, as has been seen, Italian Foreign Minister Prinetti had been misled to believe that a map had been annexed to the 1899 Declaration, when it clearly had not[216]. Moreover, the only part of the Livre jaune map relevant to these Accords had been the Tripolitanian frontier[217]. M. Lanne, apparently, did not realise that a map had intentionally - indeed on the insistence of France - not been annexed to the 1899 Declaration.

5.181 The contentions of M. Lanne then proceed along the following track. A glance at the famous map (strangely relying on the version published by the Bulletin du Comité de l'Afrique Française ("BCAF")[218], rather than as published in the Livre jaune) reveals, he suggests, a cartographic error. For the line on the map does not run southeast but, rather, east - southeast: an understandable error, he suggests, given the unsatisfactory state of cartography at the time[219]. He then goes on to say:

> "La ligne s'arrête à l'Ouadi Howa, près de sa rencontre avec le 24^{e} degré de longitude est, alors que la convention de 1899 prévoit une ligne frontière à vrai dire de longueur indéterminée, mais certaine, de direction nord-sud suivant précisément ce 24^{e} méridien[220]".

But contrary to what M. Lanne says, the travaux do bear out the fact that the juncture of Wadi Howa and 24°E longitude was very close to the end point intended for the second sector. No basis at all is given for a northern extension of the first sector boundary beyond the latitude of Wadi Howa except as an arbitrary way to push the southeast line further north, a push which the Livre jaune map had already initiated. The real objective, in fact, emerges from M. Lanne's explanation:

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[216] See, para. 5.85, et seq., above.

[217] See, para. 5.94, et seq.

[218] BCAF, April 1899, p. 101. (A copy of the BCAF map is attached as Exhibit 44.)

[219] Lanne, op. cit., p. 23. The British Ambassador in Paris and Lord Salisbury, who were not known for their cartographic expertise, spotted the discrepancy at once. See, para. 5.98, above.

[220] Lanne, op. cit., p. 23. (A copy of this page is attached as Exhibit 45.)

> "Il n'était évidemment pas question de laisser hors du territoire du Tchad Ounianga et Tekro conquis par le colonel Largeau en 1913-1914, lors de sa campagne contre les Senoussistes[221]."

5.182 What the British had perceived was quite different. A map printed at the War Office in June 1916 shows the southeast line of the 1899 Declaration ending at the intersection of 16°N latitude and 23° 30'E longitude[222]. If the line were carried further southeast, it would intersect 24°E longitude at approximately 15° 30'N latitude. This was almost precisely a true southeast line. The relevant portion of this British map has been reproduced as Map No. 63. In a note to the Quai d'Orsay of 12 December 1921, the Italian Ambassador brought to France's attention other such British and Italian maps, saying:

> "Il résulte d'ailleurs que les cartes officielles anglaises de 1914 ont interprété exactement l'article 3 de la déclaration de 1899 en donnant à la ligne frontière la direction mathématique Sud-Est (diagramme au 1: 20.000.000 de la répartition des feuilles d'Afrique dans la carte au 1: 1.000.000 publiée par L'Ordinance Survey Office - Southampton - 1914 - Carte The Anglo Egyptian Sudan 1: 300.000 - Geographical Section, General Staff).
>
> La carte officielle italienne publiée par le Ministère des Affaires Etrangères (département colonial) en 1906, donne également une interprétation qui coïncide avec la déclaration donnée par les cartes officielles anglaises[223]."

5.183 This makes it all the more difficult to understand why it was agreed between Great Britain and France to place the curious last paragraph in the 8 September 1919 Convention and why, in the light of the obligations of the two States to Italy under Article 13 of the secret Treaty of London, this modification of the 1899 Declaration was accomplished behind Italy's back[224]. Some of the reasons given at the time will emerge when the replies of France and Great Britain to Italy's protest against the Convention of 8 September 1919 are

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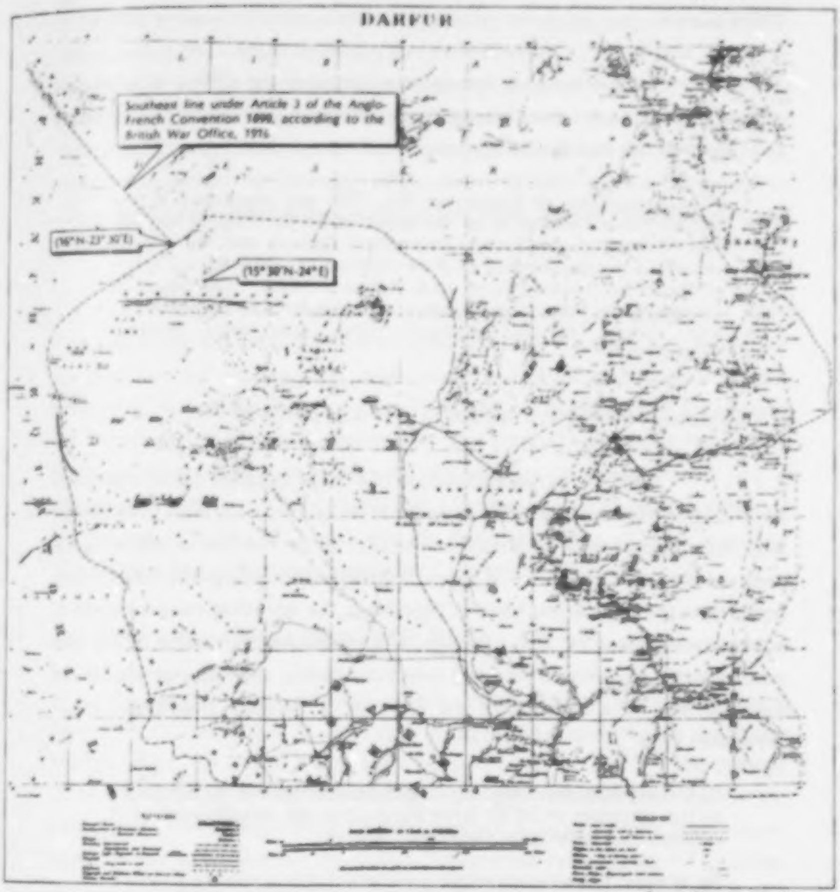
[221] It is interesting that M. Lanne describes the French military action in 1913-1914 as being "contre les Senoussistes". What Lanne omits is that the French almost immediately withdrew from the area and did not return until 1929-1930. See, Lanne, op. cit., p. 25. (A copy of this page is attached as Exhibit 45.)

[222] G.S.G.S. No. 2817 - Scale 1:3,000,000. A photocopy of the entire map has been furnished to the Registry.

[223] Note Verbale of 12 December 1921, French Archives Annex, pp. 308-309.

[224] Great Britain's conduct hardly seems compatible with the commitment it made to Italy in the secret Declaration of 11 March 1902 and related documents exchanged at the time constituting the 1902 Anglo-Italian Accord. See, para. 5.103, et seq., above.

Map No. 63


DARFUR
Southeast line under Article 3 of the Anglo-French Convention 1899, according to the British War Office, 1916
(16°N-22°30'E)
(15°30'N-24°E)

Source: British War Office Map, 1916

examined below. There are also a few hints to be found in the British Foreign Office records.

5.184 One such document, prepared in the context of the Italian protest to the 8 September Convention, is a Foreign Office note of 13 January 1922, in which this explanation appears:

> "The Convention of September 8th, 1919 was negotiated by the British Peace Delegation on the advice of Sir R. Wingate and Mr. MacMichael of the Sudan Government Service and there is no record in the department to show whether any account was taken of the effect it would have upon Italian territory. The object of increasing the French Sudan was to place under their responsibility and control certain turbulent tribes who were hitherto masterless[225]."

Confirmation of this purpose appears in the French archives[226].

5.185 A partial explanation of a more technical nature appears in the Foreign Office records. Following the sessions of the Colonial Commission, Italy had approached Great Britain in late 1919 for the purpose of delimiting the eastern border of Cyrenaïca and Egypt. Initially, after dealing with the northern sector from the coast to just south of Djaraboub, the line being considered was to continue south along 24° 30'E longitude. (This subsequently became 25°E.) This posed another situation of boundary lines not meeting, and was expressed in the following way in a dispatch of the Director of Military Intelligence of 17 November 1919:

> "It follows from the foregoing considerations that the prolongation of the meridian of 24°30' southwards from the neighbourhood of Jarabub may never meet the French sphere.
>
> Sir William Thwaites therefore considers that it is necessary to fix a southern limit for the meridional boundary of 24°30', otherwise the south-eastern angle of Tripoli may not be closed. This closure might be effected by the parallel through the common meeting-point of the English, French and Italian territories, if the Wadaï-Darfour boundary at this latitude is not extended eastwards to the meridian of 24°30'. This parallel will have a latitude of 19°30' approximately, according to the Wadaï-Darfour map[227]."

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[225] Note of 13 January 1922, FO 371/7748, British Archives Annex, p. 139.

[226] See, Sarraut's letter of 1 February 1922, French Archives Annex, p. 172.

[227] Dispatch of 17 November 1919, FO 371/4320, British Archives Annex, p. 133.

5.186 This extract does not explain the origin of the line of latitude of 19°30'N, however. Furthermore, the boundary never was extended to 24°30'E, whereas the Libya - Egypt boundary was moved east to 25°E. In 1934, as will be seen further on[228], this boundary was agreed to run south to 20°N latitude, thence west to 24°E longitude and south from there to the juncture with the "frontier of French possessions". The closure of the 25°E and the 24°E lines was, thus, accomplished by choosing 20°N rather 19°30'N latitude, in order to accomodate Italy's desire not to recognise the 19°30' line and thus avoid setting a precedent.

5.187 The British considered that the 8 September 1919 Convention entered into effect when signed and did not require ratification, for no provision for exchange of ratifications had been incorporated in the agreement. So a major shift in the line - which now had assumed in the mind of the French government the characteristics of a boundary line, not merely a line limiting France's sphere of influence - was adopted by Great Britain with a minimum of formality[229]. In France, the Convention was promulgated by law, but not until 14 April 1921, and it was only then that it came to Italy's attention. This explains Italy's delay in protesting the Convention.

(c) Italy's Inquiries and Protest

5.188 Italy learned of the Anglo-French Convention of 8 September 1919 in early 1921. By a note verbale of 14 August 1921 to the British Foreign Office, the Italian Ambassador inquired as to its text[230]. The Foreign Office responded on 30 August furnishing to the Italian Ambassador a copy of the Convention. The Foreign Office admitted neglect on its part in not having made service of this agreement on the Italian Government prior thereto[231]. Similar inquiries were made to the Quai d'Orsay by the Italian Ambassador in Paris; and on 8 October 1921, the French Ministry of Foreign Affairs replied to the Italian Ambassador's note verbale of 19 September 1921[232].

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[228] See, para. 5.284, et seq., below.

[229] See, para. 5.300, et seq., below, where it is brought out that, similarly, the 1934 Italo-Anglo-Egyptian Accord was not submitted for notification by the British Parliament.

[230] See, reference to the note verbale of 14 August in the telegram of 5 October 1921, Italian Archives Annex, p. 30.

[231] See, correspondence concerning Italy and the Anglo-French Convention of 8 September 1919 in Italian Archives Annex, pp. 30-32.

5.189 The French note of 8 October denied that there was any contradiction between the Convention of 8 September 1919 and the 1899 Declaration, arguing that the description of the line in Article 3, relating to the sector north of 15°N latitude, "dans la direction du Sud-Est", was "assez vague et n'implique nullement un tracé de frontière d'un caractère absolu". To support this argument, the French note added that -

> "... la dite déclaration, contre l'usage, n'est pas accompagnée de carte ou de croquis[233]."

It is necessary to pause for a moment over this statement by France to Italy, which is in such complete contradiction of what the French Government had alleged up until then. For the Italian Foreign Minister Prinetti, and perhaps his predecessor, Visconti-Venosta, had been informed that a map had been annexed to the 1899 Declaration; and in the 1902 Accord reference is expressly made to a map annexed to the Declaration. Yet, here, the French Government used the absence of such a map as an argument to combat Italy's impending protest[234]. As will be seen, the French Government persisted in informing other governments, including Great Britain and, indeed, the United Nations, that a map had been annexed to the 1899 Declaration, making that "fact" a cornerstone of the secret Franco-Italian Accords of 1900 and 1902 on which France's position as to the southern boundary of Libya was so heavily reliant. Apparently the ray of truth that emerged from the French note of 8 October 1921 was too damaging to French interests and had to be extinguished.

5.190 The French note then went on to claim that the 1899 Declaration line had been portrayed on other French maps in such a way as to leave on the French side of the line the regions of Tibesti and Borkou; and a map in a work by an Italian professor was mentioned as not having shown a strict southeast line. These exchanges led to cartographic studies being undertaken in

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[232] Italian Ambassador's Note Verbale, 19 September 1921, French Archives Annex, p. 303.

[233] See, French Note of 8 October 1921, as enclosed in document of 29 October 1921, Exhibit 46.

[234] This added "magic" to the Case of the Missing Map (see, para. 5.85, above): "now you see it; now you don't".

Rome, which formed the basis of Italy's formal letters of protest to France and Great Britain dated 12 December and 18 December 1921, respectively[235].

5.191 The two Italian letters of protest were essentially alike, and included the following main points:

- The southeast line set out in Article 3 of the 1899 Declaration was not obscure, for it laid down a mathematically exact southeast line, which would intersect 24°E longitude at a latitude of 15°35'N;
- The absence of a map attached to the 1899 Declaration did not detract from the definiteness of the wording of Article 3;
- Official British maps of 1914 and the official Italian Foreign Office map of 1906 portrayed the Article 3 line as an exact southeast line intersecting 24°E longitude at 16°N latitude;
- The Convention of 8 September 1919 modified the 1899 Declaration in such a way that Italy would lose 175,000 square kilometres of territory as well as the communication links between Koufra and the southern limits of the desert (the northern edge of the Sudan comprising Erdi and Ennedi);
- Italy was unable to recognize in any way the terms of the Convention.

It took over a year for France and Great Britain to respond to the Italian protest. The delay was the result of the difficulties encountered in attempting to reconcile the fundamentally different positions of France and Great Britain as to the effect of the 1899 Declaration and its "interpretation" by the Convention of 8 September 1919.

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[235] See, Italian letter of protest to France of 12 December 1921, Italian Archives Annex, p. 34; FO 371/7748, 18 December 1921, British Archives Annex, p. 138.

(d) The Differing Positions of Great Britain and France

5.192 Now that the relevant British and French archives are open for inspection, the difficulties presented by the Italian protest can be fully appreciated. For the French and British Governments were far apart over the meaning and effect of the 1899 Declaration as "interpreted" by the Convention of 8 September 1919; and yet it was not politic at the time to show this weakness in the ranks while Italy's demands for compensation under Article 13 of the 1915 Treaty of London remained unfulfilled, particularly on the French side. Accordingly, the French Embassy in London inquired how the Foreign Office planned to reply to the Italian protest.

5.193 On 16 May 1922, Lord Curzon, the Foreign Secretary, wrote to the French Ambassador in London, reporting conversations he had had with the Italian Ambassador, in which the latter had contended that the 1919 Convention purported to dispose of 175,000 square miles of Italian territory[236]. Lord Curzon set out the general lines of his proposed reply to Italy[237]. It made these points:

- The 1899 and 1919 agreements could not dispose in any way of territory belonging to other States;

- The 1899 Declaration merely defined the limits of two spheres of influence;

- This is borne out by the fact that Turkey raised no protest with regard to the 1899 Declaration[238];

- The 1919 Convention did not change the situation and could not affect any Italian rights;

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[236] Italy's protest referred to 175,000 square kilometres.

[237] Curzon to Saint-Aulair, 16 May 1922, French Archives Annex, pp. 348-350.

[238] This statement was flatly wrong, as the Foreign Office soon discovered, and the British reply was modified in this respect.

- "The question whether any of this area is Italian territory is one of fact and depends on how far Turkish sovereignty extended in this area."

Lord Curzon asked whether the French Government concurred in this interpretation of the two agreements.

5.194 In the meantime, the Quai d'Orsay was considering its own response. The position of the Government is set out in a note dated 10 February 1922 prepared for M. Poincaré, who headed the French Foreign Ministry[239]. The proposed reply of Lord Curzon was referred to the French Ambassador in Rome, a post still held by M. Barrère. Barrère had seen the Quai d'Orsay note of 10 February and immediately perceived the wide gap between the British and French positions. He set out his views in a dispatch to Poincaré dated 20 June 1922.

5.195 Barrère pointed out that -

> "... nous considérons comme une véritable frontière les délimitations établies par les accords de 1899 et 1919 ... ."

He went on to say the following:

> "Il y a donc une différence fondamentale entre le point de vue français et le point de vue anglais quant à l'interprétation à donner aux accords de 1899 et de 1919. Alors que nous voulons par notre réponse fermer la porte à toutes revendications italiennes, les Anglais, s'ils répondent dans le sens indiqué par Lord Curzon, autorisent les Italiens à persévérer dans leur demande. La Consulta aura beau jeu pour nous dire que ce que nous appelons une ligne-frontière n'a jamais été considérée comme telle par le Gouvernement Anglais et que notre interprétation des accords de 1899 et 1919 est en contradiction avec celle du Gouvernement Britannique[240]."

Barrère urged attempting to adopt "une ligne de conduite commune" with the British Government and, hence, not to rush the preparation of a reply to the Italian protest.

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[239] See, note of 10 February 1922, French Archives Annex, p. 341.

[240] Barrère-Poincaré Dispatch, 20 June 1922, French Archives Annex, p. 353.

5.196 The main lines of the French Government's position as set out in the internal note to Poincaré of 10 February 1922, which Barrère had seen, were these:

- The 1899 and 1919 agreements delimited a real territorial boundary between 15°N latitude and the Tropic of Cancer;
- The southeast line of Article 3 of the 1899 Declaration was not intended to be definitive as indicated by the "ligne pointillée" of the map and the words "en principe" of Article 3;
- Italy's claims had not extended south of 22°N latitude, as shown by British and Italian maps;
- Italy was well aware of the Livre jaune map on which the 1899 line was shown to form an angle with the Tropic of Cancer "sensiblement plus aïgu que celui de 45 degrés";
- In the 1900-1902 Franco-Italian Accords the Tripolitanian frontier was shown on the map there referred to as lying well to the north of the region covered by the 1919 Convention, and hence no prior consultation with Italy was called for.

The French position contains a few new elements and surprises.

5.197 One surprise was the candid admission concerning the famous 1899 Declaration map:

> "Comme il n'y a pas eu de carte annexée à la Déclaration de 1899, il ne peut s'agir ici que de la carte annexée au Livre jaune relatif à cette Déclaration."

It would be supposed that this would have ended any claim by the French Government that a map had been so annexed; but as will be seen it did nothing of the kind; and even the formal French reply to the Italian protest omitted this correct statement and continued, falsely, to refer to an annexed map.

5.198 A second surprise is the appearance of the line of latitude of 22°N as limiting any Italian claims to the south. On the basis of this contention, the conclusion was reached that Italy was only marginally concerned with the shift in the southeast line. There is a vague reference to Italian and British maps showing such a line; but official British and Italian maps show no such line. The Quai d'Orsay archives do, however, contain two documents of relevance to this point. On 22 December 1921, the Quai d'Orsay sent the following hand-written dispatch to the French Embassy in London:

> "Prière de me faire connaître télégraphiquement la date de l'Accord Anglo-Italien par lequel le Gouvernement britannique aurait reconnu la 22° latitude nord comme frontière méridionale de la Lybie[241]."

On 29 December, Ambassador de Saint-Aulaire in London responded as follows:

> "Des renseignements qui m'ont été fournis par le Foreign-Office, il résulte qu'aucun accord anglo-italien concernant la frontière méridionale de la Libye n'a été signé. Des négotiations à cet effet sont en cours[242]."

5.199 This information apparently did not deter the Quai d'Orsay from contending in its subsequent formal response that 22°N latitude was the southern limit of Italian claims. It should be noted here that the line of latitude 22°N has significance for a quite different boundary, that between Egypt and Sudan as delimited by the Anglo-Egyptian Arrangement of 10 January 1899 (Map No. 64)[243]. However, until the western boundaries of Egypt and Sudan were agreed, how far to the west 22°N latitude would extend as a north/south boundary was not known. This was resolved in the Italo-Egyptian Accord of 6 December 1925[244], which delimited the Libyan-Egyptian boundary starting at the Mediterranean. South of Djaraboub it followed 25°E longitude down to 22°N latitude, so that the 22°N latitude boundary between Egypt and Sudan stopped at 25°E and had no further relevance west of that longitude[245].

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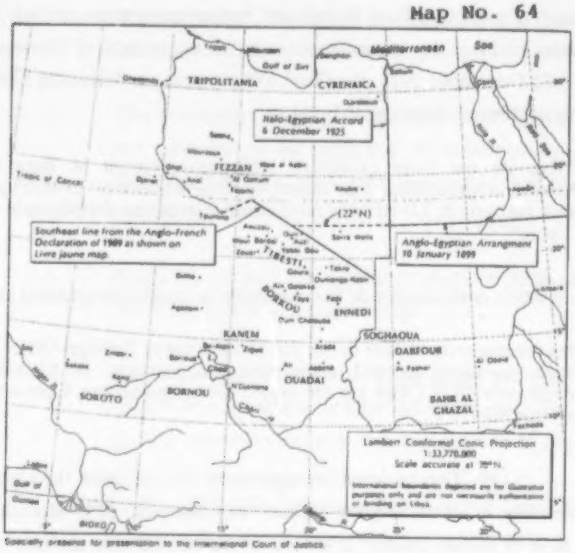
[241] Quai d'Orsay, Handwritten Dispatch of 22 December 1921, French Archives Annex, p. 310.

[242] Ambassador de Saint-Aulaire's Reply, 29 December 1921, French Archives Annex, p. 312.

[243] This Agreement is also known as the Boutros-Cromer Convention.

[244] See, Italo-Egyptian Accord of 6 December 1925, International Accords and Agreements Annex, No. 23. This agreement is discussed below starting at para. 5.218.

Map No. 64



Specially prepared for presentation to the International Court of Justice

5.200 Several points of interest emerge from the records of the Quai d'Orsay, particularly from an unsigned note written in long-hand and dated 30 December 1921. These relate to the extension of the second sector boundary of the 1899 Declaration north to 19° 30'N latitude accomplished by the 1919 Convention's "interpretation". This note suggests that the 1919 "interpretation" of the southeast line was motivated by the desire not to place under different sovereignties what is described as the homogeneous regions of Tibesti and Ounianga, which an exact southeast line would have done. The short explanation given in this note is this:

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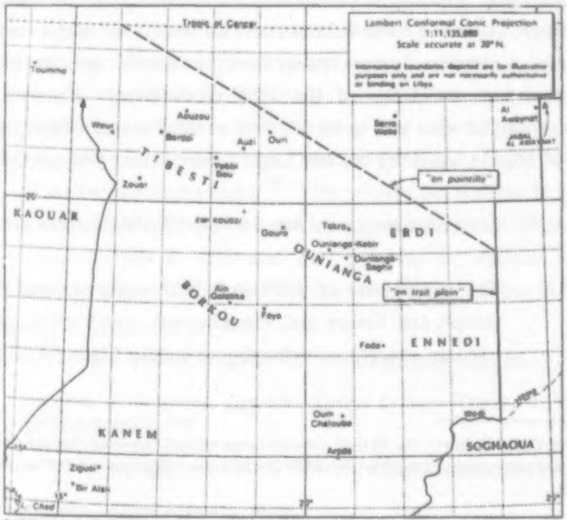
[245] By the Italo-Anglo-Egyptian Accord of 20 July 1934, the Libyan-Egypt boundary was extended south to 20°N latitude, then west to 24°E and then south to the "frontier with French possessions". See, para. 5.284, et seq., below. For a copy of the 20 July 1934 Italo-Anglo-Egyptian Accord, see, International Accords and Agreements Annex, No. 24.

> "Il y a, sinon unité complète, du moins cohésion certaine entre les tribus de ces régions, du fait de leur parenté ethnique et surtout de leur commune obédience au Senoussisme. Rien n'eût été plus dangereux que de soumettre à deux politiques différentes et peut-être contradictoires[246]."

As the discussion in Part III, Chapter II, above shows so clearly, this explanation makes no sense. One has only to look at Map No. 20, which appears in reference to paragraph 3.40 above, to see this. This map has been reproduced on the basis of data appearing in a 1982 study of the Toubou by J. Chapelle, one of the leading French authorities. It shows this tribe to extend far north into Fezzan and Cyrenaica as well as west into Kaouar. The Toubou have throughout history been a wide-ranging nomadic tribe moving in and out of different regions as a matter of course without regard to any alleged frontiers. As for the Senoussi link, such an argument would lead in a quite different direction than France had in mind. It would tie the entire area at least south to 15°N latitude to Libya, for the leaders of the Senoussi Order were unmistakably Libyan, and its principal centres at the time this note was written were in Cyrenaica. The tribes in this region were all Senoussi followers; and the French wars of the period were conducted against the tribes, against the Senoussi Order and against their ally, the Sultan of Ouadaï. It was the French forces that had attempted to break up the tribal cohesion referred to in the note.

Map No. 65



Specially prepared for presentation to the International Court of Justice

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[246] Quai d'Orsay, handwritten note, 30 December 1921, French Archives Annex, p. 320.

5.201 The other point emerging from the hand-written note, and from other drafts prepared at the time explaining the French point of view, relates to the Livre jaune map, which the note again wrongly describes as annexed to the 1899 Declaration. For it was suggested that "le Gouvernement Italian ne peut donc ignorer" this map in the light of the reference to it in the 1902 Prinetti-Barrère exchange of letters. Aside from pointing out that this map did not show a true southeast line, the French drafts suggested another argument. The map shows the southeast line from the Tropic of Cancer to its intersection with 24°E longitude "en pointillé". However from that point south along 24°E is "en trait plein" (Map No. 65). The suggestion made was that the solid north/south line ending at about 19°N latitude was intended to be definitive, whereas the southeast line "en pointillé" was not. However, it is nowhere explained on what basis the line north of approximately 15°45'N latitude shown on this map acquired any status as a boundary line in the first place[247].

5.202 It is interesting to turn now from the records of the Quai d'Orsay to those of the British Foreign Office to see how the issues raised by the Italian protest of 18 December 1921 were being analysed in London. The initial Foreign Office memorandum on the subject is dated 13 January 1922[248]. It confirmed the fact that the British maps referred to in the Italian protest showed a strictly southeast line. This memorandum was then commented on by others in the Foreign Office, usually in hand-written notes affixed to the file, as was the usage at the time. A number of errors appear there, such as the assertion that the Ottoman Empire had not protested the 1899 Declaration. However, the comment that expressed what was to be adopted as the Foreign Office position was that of H.W. Malkin, who later became Legal Adviser of the Foreign Office.

5.203 Malkin's cogent note dated 5 May 1922 made these points:

- The agreements of 1899 and 1919 were between Great Britain and France and, consequently, could not dispose in any way of territory belonging to a third State: "Such rights as Turkey originally had and now may possess could not be affected by any such agreement."

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[247] As in Lord Curzon's letter, the French commentaries wrongly asserted that the Ottoman Empire had not protested against the 1899 Declaration. See, para. 5.193, above, and related fn.

[248] Note of 13 January 1922, and internal Foreign Office comments thereon, FO 371/7748, British Archives Annex, p. 138.

- In any event the 1899 Declaration involved no transfer of territory - it only defined two spheres of influence, and this situation was not modified at all by the Convention of 1919.

Malkin concluded as follows:

> "The upshot of it all is that to my mind the two Anglo-French agreements did not and could not affect the rights of Italy in any territory which belonged to her. The question whether any of the territory to which those agreements applied is territory now belonging to Italy depends of course on the question of fact as to how far Turkish sovereignty extended[249]."

This study by the Foreign Office led to Lord Curzon's letter of 16 May 1922 to the French Ambassador setting out the British Government's proposed line of reply to Italy[250].

5.204 The Foreign Office received a negative reaction to this line of reply from the Quai d'Orsay, which proposed that identical replies be formulated[251]. The French position had been based in part on the alleged absence of any Ottoman protest to the 1899 Declaration. This was discovered to be totally wrong. It may have been an attempt to justify this serious lapse that led the French Government subsequently to described the Ottoman Empire's extensive protests as "platonic"[252]. In any event, the Foreign Office was not inclined to adopt the French line, and on 21 August 1922 Lord Curzon so informed the French Ambassador[253]. He pointed out that the British view of the meaning of the 1899 Declaration had been clearly expressed to the Ottoman Empire and to Italy in 1899 and that it would be difficult for the British Government to depart from the interpretation previously adopted by them.

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[249] Malkin's note of 5 May 1922, FO 371/7748, British Archives Annex, p. 149.

[250] See, para. 5.193, above. See, also, Curzon to Saint-Aulaire, 16 May 1922, French Archives Annex, p. 348.

[251] Barrère-Poincaré Dispatch, 20 June 1922, French Archives Annex, p. 351.

[252] See, para. 5.52 and related fn., above.

[253] Curzon to Saint-Aulaire Note Verbale, 21 August 1922, French Archives Annex, p. 355.

5.205 Lord Curzon's note verbale of 21 August 1922 received a formal response from the French Ambassador in a note dated 8 December 1922. It appears to have been prepared with considerable care, and is an important document in this case. The French note started off this way:

> "Si le projet de réponse du Gouvernement français est différent de celui du Gouvernement britannique, ce n'est pas qu'il méconnaisse le bien-fondé des arguments du Foreign Office, c'est que la situation de la France en Afrique vis-à-vis de l'Italie est différente: elle est déterminée par les accords franco-italiens de 1900-1902 qui sont postérieurs aux protestations que les Ambassadeurs de Turquie et d'Italie ont pu élever à Londres, le premier, le 17 Mai 1899, et le second, le 4 Avril 1899, contre la convention franco-britannique du 21 Mars 1899[254]."

Here, for the first time, the 1900-1902 secret Franco-Italian Accords emerge as what later was to be described as the "texte de base" of the French position regarding the southern frontier of Libya. It was articulated in the context of trying to resolve the seemingly irreconcilable positions of France and Great Britain as to the meaning and effect of the 1899 Declaration and of the 1919 Convention "interpreting" it; and for this purpose it seemed cleverly contrived.

5.206 The French note proceeded to develop an essentially new line of argument based on these Accords, which followed this course:

- In the 1900-1902 Accords, Italy had renounced any claims over any Tripolitanian hinterland -

  > "... en reconnaissant n'avoir de vues que sur une Tripolitaine nettement délimitée, (l'Italie) s'interdisait de réclamer ultérieurement tout autre territoire situé au sud de cette Tripolitaine et ayant pu faire partie des possessions réelles ou fictives de l'Empire Ottoman en Afrique."

- The specific ("nettement délimité") Tripolitanian frontier recognized by Italy and France had been set out on the map annexed to the 1899 Declaration and referred to in the 1902 Accord;

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[254] Note of 8 December 1922, FO 371/7749, British Archives Annex, pp. 161-162.

- The same map showed the southeast line of Article 3 of the 1899 Declaration as not running strictly southeast from the Tropic of Cancer at all, for it intercepted 24°E longitude at approximately 19°N latitude;
- The southeast line on the map is shown "en pointillé", whereas the frontier along 24°E longitude is "en trait plein", establishing that the southeast line was not intended to be "définitive";
- The 1919 Convention did not change the 1899 Declaration in this regard: the resulting southeast line intersects 24°E longitude at 19°30'N instead of at approximately 19°N latitude, a negligible difference;
- There was no obligation to notify Italy during the discussions leading to the 1919 Convention since the area concerned lay outside the frontiers of Tripolitania as shown on the map referred to in the 1900-1902 Accords.

5.207 Before commenting on this line of argument, it should be noted that the general reaction of the British Foreign Office was that the French position was "extraordinary", particularly in regard to its reliance on a map alleged to have been annexed to the 1899 Declaration[255]. So the British set about the task of "chercher la carte". The French Embassy was asked to furnish a copy, since no copy could be found with the original signed version of the 1899 Declaration in London. Being reluctant to allow the British original to leave the fire-proof safe, the Foreign Office invited a diplomat of the French Embassy (M. Japy) to inspect this document, which he did on 28 December[256]. He found no map. M. Japy undertook to write the Quai d'Orsay at once for an "elucidation of the mystery".

5.208 The trail ends here. The report made to M. Japy, and his report to the Foreign Office, have not yet been uncovered. But the story is nevertheless clear. The British Foreign Office was misinformed about the map in circumstances in which it is evident that the Quai d'Orsay well knew that no such map had been annexed to the 1899 Declaration: the internal French note of 10 February 1922 candidly admitted this[257]. Yet this mysterious map was the cornerstone of France's cleverly contrived solution to dealing with the otherwise irreconcilable French and British positions in responding to the Italian protest.

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[255] See, note of 18 December 1922, FO 371/7749, British Archives Annex, p. 168.

[256] See, Handwritten Note of 28 December 1922, FO 371/7749, British Archives Annex, p. 172.

5.209 The French note of 8 December 1922 contained one argument that was new - an argument that failed to appear in France's subsequent formal response of 7 February 1923 to Italy's protest of 12 December 1921. That was the argument that in the 1900-1902 Accords Italy had acknowledged that its interests were limited to the specific limits of Tripolitania, as shown on the map alleged to have been annexed to this 1899 Declaration, and as a result had forfeited any right thereafter to claim territory south of those limits on the basis that they had been part of the Ottoman Empire's Tripolitanian-Cyrenaican hinterland. This was a fallacious argument; for Italy's purpose in those Accords was to secure a definition of the boundaries of Tripolitania, not its hinterland, and a reassurance that France had no designs on Tripolitania. The basic document containing this reassurance, which was further refined in 1902 with reference to a map, was the declaration contained in the 1900 letter of Barrère. It was a unilateral statement made by France, not Italy. In fact, as pointed out above[258], the 1900 exchange was not bilateral. In any event, this argument was dropped by France in its formal response to Italy's protest, although it did not vanish from the litany of arguments that France was to repeat over the years.

5.210 What is surprising about France's formal response in the note verbale of 7 February 1923 is the subsidiary argument - that France had no obligation to tell Italy about its discussions with Great Britain that led to the Convention of 8 September 1919 - made, once again, in reliance on the map, referred to repeatedly in the note as "la carte annexée à la Déclaration du 21 mars 1899[259]". This subsidiary argument is inconsistent with the French Government's primary argument, in which it contended that since the "annexed map" showed the southeast line as not being truly southeast at all, but rather as intersecting 24°E longitude at about 19°N latitude, the "interpretation" of the 1919 Convention virtually changed nothing:

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[257] See, paras. 5.189 and 5.197, above.

[258] See, para. 5.68, above.

[259] French Note Verbale, 7 February 1923, Italian Archives Annex, p. 42.

> "Cette interprétation, si voisine du tracé provisoire de la carte de 1899, élargit légèrement la zone d'influence française au préjudice du domaine anglo-égyptien. Mais l'esprit de la Déclaration de Londres de 1899 est respecté et son texte faisait déjà prévoir cette interprétation[260]."

For in denying any obligation to notify Italy of the negotiations leading to adoption of this Convention on the basis that the limits of Tripolitania in the 1900-1902 Accords, as set out in the "carte annexée à la Déclaration du 21 Mars 1899", did not descend further south than Toummo, the French Government totally undermined their first argument based on the direction the southeast line took, as portrayed on the Livre jaune map. This was tantamount to saying to Italy that the southeast line did not concern it and then, in the same breath, saying that Italy recognized this line since it was portrayed on a map that was falsely represented to have been annexed to the 1899 Declaration.

5.211 There is one other point made by France in the note verbale of 7 February 1923 that is novel. It is suggested that France had undertaken in the 1899 Declaration not to acquire political influence or territory beyond the line to be delimited under Article 2 of the Declaration, which covered the first sector. As to the Article 3 line, relating to the second sector - the line descending southeast from the Tropic of Cancer - the inference conveyed in the note is that no such restriction applied to France in that sector. Such a reading of the 1899 Declaration is patently wrong. Article 2 concerned real territorial boundaries. Article 3 did not; it concerned only spheres of influence, and although no French sphere is affirmatively recognized, Article 3 specifically stated that the "French zone" in the second sector was to be limited by the southeast line[261].

5.212 The British response two days earlier, by note verbale dated 5 February 1923, followed the entirely different British interpretation of the 1899 and 1919 agreements: namely, that these agreements could not affect any Italian rights in the area, as to which it said:

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[260] Ibid., p. 44.

[261] See, para. 5.58, et seq., above.

> "The question whether any of this area is Italian territory is one of fact, in which the onus of proof lies on the Italian Government[262]."

The letter referred to earlier explanations given by Great Britain to Italy in 1899 to the effect that as to the territory north of 15°N latitude the Declaration had been -

> "... carefully worded in a negative sense so that while it placed a limit on the eventual advance of France to the eastward and of Great Britain to the westward, it did not recognise or purport to pass judgment on any other rights or claims."

This interpretation is at odds with the inference in France's note verbale two days later suggesting that in this second sector, north of 15°N latitude, no restrictions on France governed.

5.213 The British note then proceeded to discuss the question of Italian rights in the area and the special relationship between Italy and France in the matter:

> "If the Italian Government have any rights of sovereignty in the area in question, they can only have been inherited from the Turkish Government. At the time of the declaration of March, 1899, the Turkish Ambassador in London drew the attention of the Foreign Office to the bearing of this declaration upon possible Turkish rights in this region. His Excellency was informed that the arrangement he had referred to laid down certain limits to the acquisition of territory and political influence by the two contracting parties, but did not deal with the question of existing rights. Any question of that nature, he was told, should, in the opinion of His Majesty's Government, be discussed by the government of the Sultan with the Power which might assume jurisdiction over the territories claimed by the Porte whenever the occasion might arise. From that day to this, however, the occasion does not appear to have arisen, nor did the Porte, so long as Tripoli was a Turkish possession, ever re-open this question or contend that their rights in the area were affected.
>
> You will have realised that this question is one which affects the government of the French Republic as much as His Majesty's Government. The French Government, it has been ascertained, entirely share the view of His Majesty's Government that the arguments put forward in Monsieur Taliani's note under reference cannot be regarded as well founded. Moreover, His Majesty's Government understand that the French Government have in addition particular reasons for regarding the Italian stand point as

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[262] British Response of 5 February 1923, Italian Archives Annex, pp. 38-39.

untenable. These they will doubtless communicate to the Italian Government when approached on the subject[263]."

The oblique reference in the last paragraph was, of course, to the Franco-Italian Accords of 1900-1902.

5.214 Thus, at the end of the day, France and Great Britain went their separate ways in responding to Italy's protest of the 1919 Convention, each rejecting it for entirely different reasons. The 1900-1902 Accords served as the vehicle for reconciling the almost diametrically opposed views of the French and British Governments as to the meaning and application of the 1899 Declaration and the 1919 Convention. As a result, these Accords became the cornerstone of France's position as to a southern boundary of Tripolitania - Cyrenaica, a cornerstone that in turn relied on a map that was, in fact, not annexed, as France had said it was, to the 1899 Declaration. Apparently, Great Britain was content to ignore that matter, and the French Government continued to mislead Italy and everyone else concerning this map. But it is important to note here that most of the southeast line concerned the hinterland of Cyrenaica, which was in Great Britain's sphere of influence under the 1899 Declaration. Thus, it is reasonable to conclude that Great Britain's reading of the meaning and scope of the 1899 Declaration, and its "interpretation" in 1919, is entitled to more weight than are the views of the French Government since British, not French, interests were affected.

SECTION 11. The 1924 Anglo-French Protocol and Declaration Concerning the Sudanese Boundary

5.215 In the meantime, the delimitation commission designated under Article 4 of the 1899 Declaration completed its work, incorporating in it the "interpretation" of the Declaration set out in the 1919 Convention as shown on the illustrative map issued with the Convention. The task of the Commission was to delimit the Article 2 or first sector of the 1899 Declaration boundary, as that sector was subsequently modified by the 1919 Convention. This it did in the Protocol of 10 January 1924[264]. However, after reaching the point of intersection of Wadi Howa (15°45'N latitude) with 24°E longitude, which was the end point of the first sector, the Commission continued on to the north, thus entering the second or Article 3 sector, which did not concern territorial boundaries at all, but spheres of influence. The delimitation in Section VIII (g) of the Protocol in fact continued north along 24°E longitude to its intersection with 19°30'N latitude. The language used in Section VIII (g) of the Protocol was this:

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[263] Ibid., emphasis added.

[264] Anglo-French Protocol of 10 January 1924, International Accords and Agreements Annex, I, No. 21. See, also, internal notes of the Foreign Office, 23-31 January 1924, FO 371/10025, British Archives Annex, pp.173-177.

> "A partir de l'intersection de l'oued avec le méridien 24°, la frontière suit le méridien 24° en direction du nord jusqu'à sa rencontre avec le parallèle 19°30' nord."

At the intersection of 19°30N and 24°E, "un petit tas de pierres marque l'extrémité de la frontière", according to Section VIII (k).

5.216 Thus, failing to observe the limits of its jurisdiction set out in Article 2 of the 1899 Declaration, which restricted the boundary commission's task to the Article 2 or first sector of the boundary, the commission proceeded north to delimit the second sector up to 19°30'E latitude, describing it as a "boundary". It remains a mystery how the British Government could have authorized this action by its commissioner and at the same time have given the response it did on 5 February 1923 to the Italian protest. The Protocol was confirmed by the British and French governments in the Anglo-French Declaration of 21 January 1924.[265]

5.217 It is not surprising, therefore, that Italy was not mollified by the long-awaited British and French responses of 5 and 7 February 1923. Following this delimitation, Italy's Ambassadors in London and Paris expressed their Government's dissatisfaction over the responses received from France and Great Britain, and subsequent developments, in quite lengthy notes verbales dated 28 February and 27 March 1924, respectively[266]. These notes, in effect, reargued Italy's position. They were not given much attention by either the British or the French: the Foreign Office decided only to acknowledge receipt of the letter. This extraordinary series of events are at the root of the French (and now the Chadian) claim concerning the existence and location of a southern boundary of Libya east of Toummo.

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[265] Anglo-French Declaration of 21 January 1924, International Accords and Agreements Annex, No. 22.

[266] See, Notes of 28 February 1924 and 27 March 1924, FO 371/10025, British Archives Annex, pp. 178 and 186 respectively..

Section 12. Italo-Egyptian Accord of 6 December 1925

5.218 Turning now to the eastern boundary of Cyrenaica, it will be recalled that during the 1919 sessions of the Colonial Commission, Great Britain had been receptive to including Djaraboub as part of Cyrenaica[267]. Great Britain had previously recognized Italy's rights in respect to Koufra in 1906 and in 1914, although this had yet to be formalized[268]. These two oases had an important identification with the Senoussi. The Great Senoussi had been buried at Djaraboub in 1859, and the place had since become a shrine. He had also founded there the famed Islamic University. Koufra became the headquarters of the Senoussis in 1895 after it had been moved south from Djaraboub[269].

5.219 The commitment of Great Britain as to Djaraboub was confirmed in an exchange of letters between Lord Milner and Italian Foreign Minister Tittoni on 15 September 1919[270]. A second accord in April 1920 in an exchange of letters between Lord Milner and Tittoni's successor, Scialoja, dealt with the starting point of the boundary in the north and would have left all of the Bay of Sollum on the Egyptian side[271]. However, this accord had not been ratified by Italy at the time Egypt achieved independence in April 1922; and Egypt was not happy with the commitment of Great Britain to give Djaraboub to Cyrenaica, due to its importance to the Senoussi and the fact that the Head of the Senoussi Order had taken refuge in Egypt, where he then resided.

5.220 After two months of negotiations, an Accord was reached on 6 December 1925 in which the start of the frontier was fixed at Bardia, on the Mediterranean, thus leaving the Gulf of Sollum on the Egyptian side[272]. The boundary then went south along an irregular line of designated oases, leaving Djaraboub to Cyrenaica. Thereafter, it descended south along 25°E longitude until its intersection with 25°N latitude (Map No. 66). Egypt did not ratify the Accord until June 1934 and, as will be seen further on, after World War II, Egypt sought a rectification of this line[273]. Nevertheless two of the places most identified with the Senoussi were by agreement with Great Britain and, in turn, with Egypt determined to be a part of Libya, which they remain today.

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[267] See, para. 5.162, above.

[268] Pichon, op. cit., p. 199.

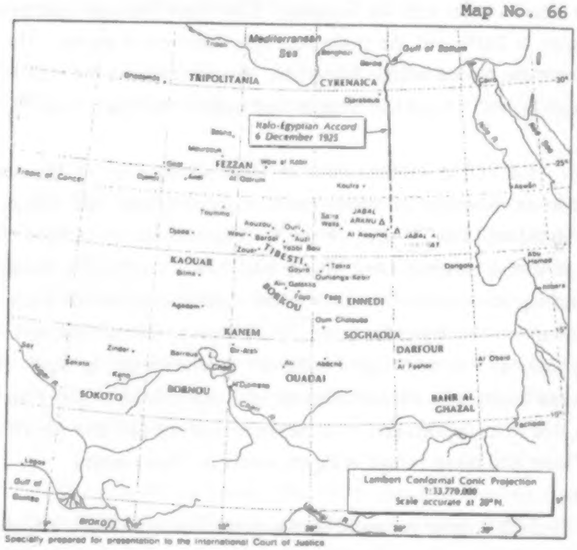
[269] Wright, J: Libya, Ernest Benn Limited, London, 1969, pp. 110-113. See, generally, para. 3.51, et seq., above.

[270] See, Pichon, op cit., pp. 198-200.

[271] Ibid.

[272] Italo-Egyptian Accord of 6 December 1925, International Accords and Agreements Annex, No. 23.

Map No. 66



Specially prepared for presentation to the International Court of Justice

SECTION 13. Treaties with the Senoussi

5.221 The history of the conflict between France and the Senoussi has already been discussed. By early 1900, Italy had started its first attempts to cultivate friendly relations with the Senoussi in the light of their universally recognized authority over the hinterland of Tripolitania-Cyrenaica. Italy had been aware of the strategic importance of this hinterland for the stability of the Mediterranean since 1890, when the Anglo-French Declaration delimiting the respective spheres of influence in the hinterland had triggered the first Turkish diplomatic protests. The Italian Government was also aware of the great importance of the position of the Senoussi in this hinterland. It has been said that "in the Eastern Sahara and the Central Sudan ... the Senoussi became the most powerful Sheikh, acquiring the authority of a territorial sovereign"[274].

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[273] See, para. 5.364, below.

5.222 In 1907, Italy's Prime Minister Giolitti sent envoys to Koufra to discuss entering into an agreement with the Senoussi. This was at a time when the French moves from the south had started to intensify. In 1911, in a letter addressed to the "Civil Nations" and published in a number of European newspapers[275], the Head of Senoussi, Sayyid Ahmad al-Sharif, denounced the acts of violence being carried out by the French against the Order, its zawiyas and against the Senoussi Tribes[276]. The letter, while stressing the religious and peaceful character of the Order, set the principles for the political struggle, first against the French, then against the Italians in the years to come. It also contained an acknowledgment of allegiance of the Senoussi to the Sultan.

5.223 Under the terms of the Treaty of Ouchy, the Turks were to withdraw their forces from Tripolitania; but in fact they left in Cyrenaica a few officers who, under the leadership of the Turk, Enver Bey, helped to organize, along with the Senoussi, the tribal resistance. According to some sources[277], Enver Bey is said to have asked the Head of the Senoussi to continue the war in the name of the Sultan. Some Italian authors go so far as to say that Enver Bey delivered to him a firman investing the Senoussi with semi-sovereign powers[278]. Whatever may actually have occurred, it is known that when Enver Bey left Cyrenaica at the end of 1912 he left behind a small Turco-Senoussi army that he had assembled. The Senoussi resistance to Italian occupation developed into a war that continued until 1914, consisting of a series of guerilla operations and skirmishes. But the war went badly for the Libyan peoples: by the end of July 1914, all the main zawyias of Western and Central Cyrenaica had been destroyed by the Italians.

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[274] Encyclopaedia Britannica, Eleventh Edition, 1911, vol. 24, p. 649.

[275] Il Giornale d'Italia, 6 August 1911. (A copy of this document is attached as Exhibit 47.)

[276] One paragraph of this letter concerns the French attacks on the zawiyas:

> "The French attacked the Zawiya of Jannit, killing the students and ulemas whom they found there, tearing it up and trampling it underfoot and then seized the arms and everything else they could; they did the same to the Zawiya of Kauar. They attacked that at Kanem without warning and killed most of the people whom they found there, subsequently removing the books and whatever there was of value. France did not cease from its attacks and we were obliged to defend ourselves in any way we could, trusting in God that he would give us victory."

[277] Evans-Pritchard, op. cit., p. 115.

[278] See, Del Boca, A.: Gli Italiani in Libia. Tripoli bel suol d'amore, 1860-1922, Rome, Laterza, Vol. I, 1988, pp. 200-202.

5.224 With the outbreak of World War I, the Senoussi found themselves allied with Turkey and Germany, receiving from them help and military supplies to carry on the struggle against Italy. In July 1915, the Head of the Senoussi had been appointed by firman of the Sultan to govern Tripolitania and dependent regions and had proclaimed a holy war against all infidels[279]. Pressed to act by their Turkish allies, the Senoussi attacked Great Britain in Egypt, but they were quickly defeated by the British forces.

5.225 Meanwhile, Italy and Great Britain had initiated discussions with a view to adopting a common political line in dealing with the Senoussi in February 1915. An understanding was reached on 31 July 1916, to which France adhered on 18 March 1917[280]. In the exchange of letters that constituted this understanding, it was agreed to recognize Idris as the Head of the Order. But it was also agreed (i) not to accord any territorial concessions to him and (ii) not to accord him independence or autonomy or in any way infringe the sovereignty of Italy. At the same time, it was considered possible to accord to the Head of the Order administrative autonomy over certain oases always under the sovereignty of the State in possession. The parties thus sought to avoid any recognition of the Senoussi Head as a temporal leader and carefully to reserve sovereignty to the "state in possession", limiting all exceptions to an undefined administrative autonomy that remained under the discretionary control of the occupying Power.

5.226 From that time on, until Libyan independence in 1951, the dealings of Great Britain, France and Italy with the Senoussi continued to reveal their serious concern over according recognition to the Senoussi as an autonomous, even sovereign, entity. This concern during the period is reflected in the records of the British Foreign Office; it was evidently a source of constant worry to the British. But this very fact demonstrates that the Senoussi were indeed a force possessing temporal powers that had to be reckoned with on the political level. At the end of the day, it was this political force that, under the auspices of the United Nations, was chosen to head the new Libyan State.

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[279] Evans-Pritchard, op. cit., p. 126.

[280] Understanding between Italy and Great Britain of 31 July 1916, International Accords and Agreements Annex, No. 13.

5.227 While the understanding just mentioned was being reached, trilateral discussions were underway at al-Zuwaitina in Libya among the Head of the Senoussi, Colonel Milo Talbot, who represented Great Britain in the negotiations, and the Italian delegates, Colonel Villa and Comm. Piacentini. In the face of Senoussi efforts to enter into negotiations with the British alone in order to reach a separate agreement that did not include Italy, the British took the position that lasting peace in the region could only be achieved through an agreement among all the parties involved, and they rejected any proposal that excluded Italy[281]. Many Libyans then, as today, considered what ensued as not a bright chapter in Libyan history; for Idris was too easily influenced by the British and ended up in a sense capitulating to the Italians. But what ensued has legal relevance to this case, nevertheless, for it bears directly on the title held by the Libyan peoples to their territory, which was passed on to the State of Libya in 1951 with the creation of a constitutional Senoussi monarchy.

5.228 Characteristically, the instructions from the British War Office directed that great care be taken to make no statement that would refer to Idris as the leader of a temporal Power. The dispatches show that Colonel Talbot was well aware of the delicacy of this issue, which concerned sovereignty. At the same time, he sympathized with Idris' refusal to recognize publicly Italian sovereignty or to assist in disarming the population. For the Senoussi influence in the region was essential to the maintenance of peace, and Talbot feared that a weakening of Idris's prestige could have repercussions all over the Islamic community. Talbot believed that, since Italian sovereignty had been recognized by all the European Powers, it was unnecessary to reaffirm it.

5.229 It soon appeared clear that the positions of Italy and the Senoussi were difficult to reconcile in a way that would result in a definitive settlement of their respective claims. Italy sought recognition of its sovereignty over Libyan territories, the dissolution of Senoussi military forces and the return of Italian prisoners detained in Djaraboub. The Senoussi had comparable claims: the creation of a State of Cyrenaica, the maintenance of Senoussi armed forces and the right to mint money. On one point, however, the parties agreed: they both were anxious to put an end to the hostilities. Thus, they agreed to attempt to reach a compromise based on commercial relations, on the security of the territories and on the release of Italian prisoners.

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[281] Evans-Pritchard, op. cit., pp. 134-141; Del Boca, op. cit., pp. 336-337.

5.230 The Italian Government came to consider the terms of the proposed compromise humiliating. They took the position that Italy's delegates at al-Zuwaitina were not empowered to sign any such agreement, and the discussions came to a halt. Negotiations were thereafter suspended for some months.

5.231 Talks resumed in December 1916 at Acroma. The Italian delegates had changed, as had the general atmosphere of the negotiations - for the worse. Among the problems was the fact that there was no real understanding between the British and the Italian delegates. The British were open to concessions, provided they could reach a conclusion as promptly as possible to put an end to the unpleasant memory of a war that had cost England 80 million pounds. The Italians, on the other hand, were adamant in their positions and did not show any disposition to act quickly, for they were determined not to abandon the fundamental issues they had come to resolve.

5.232 On the Italian side, two trends emerged in the course of the negotiations: the line adopted by the Italian delegation and the government of Cyrenaica; and the position of the Government in Rome. The Italian delegation believed it to be unreasonable to expect from Idris any engagement that would decrease his authority as Head of the Order. To the delegation the primary objectives were to assure peace in the colony and to allow pacific penetration into the country and the effective exercise of sovereignty. For the Italian Government in Rome, the terms of the agreement had to be rigorous[282]. The approach of the delegation prevailed, and the Treaty of Acroma was signed on 17 April 1917[283].

5.233 Shortly before, on 14 April 1917, the Head of the Senoussi had agreed to the terms proposed by the British and signed with them an agreement regulating the exchange of prisoners from the Egyptian war, and the dissolution of Senoussi armed forces and Senoussi lodges in Egyptian territory[284]. Both parties were satisfied with the provisions of the Agreement: Great Britain obtained the military security it sought, the Senoussi remained in control of most of Cyrenaica. Idris was to be treated almost as the "secular ruler of an independent people[285]".

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[282] Del Boca, op. cit., p. 338.

[283] Treaty of Acroma of 17 April 1917, International Accords and Agreements Annex No. 16.

5.234 The Treaty of Acroma was composed of a dual *modus vivendi*; and, while setting the basis for the establishment of peaceful relations between the parties, it left unresolved the main political issue that both parties were anxious to clarify: the competing claims to sovereignty. Effectively, the Treaty was a compromise that contained a fundamental contradiction: Italy had signed the agreement without giving up its sovereignty over Cyrenaica while, in effect, recognizing in the *modus vivendi* the sovereignty and independence of the Senoussi in the same region.

5.235 In the Treaty, Italy recognized the *de facto* sovereignty of the Senoussi throughout most of Cyrenaica, with the exception of the territories effectively occupied by Italy. The relationship resembled that between the Senoussi and the Ottoman Empire that had preceded it:

> "The authority of the Italians was limited, as that of the Turks had been, to the coastal towns and a few inland posts and the rest of the country came under Sanusiya administration. The Order recognized their *de facto* control of the towns and they recognized the *de facto* rule of the Order in the country[286]".

So the price of a peaceful settlement for Italy was an armistice and a division of Cyrenaica into two areas to be governed by two different powers: Italy and the Senoussi.

5.236 This is not the place to attempt a political assessment of the Treaty of Acroma. While it may have enhanced the prestige of Idris, it was not well received by many of the Senoussi *sheikhs*. His predecessor, Sayyid Ahmed al-Sharif, in the wake of these political events, of which he disapproved, took refuge in Constantinople, and formally abdicated in favour of his 27-year old cousin, Idris.

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[284] Agreement between Great Britain and the Senoussi of 14 April 1917, *International Accords and Agreements Annex*, No. 15.

[285] Evans-Pritchard, *op. cit.*, p. 144. (A copy of this page is attached as *Exhibit* 48.)

[286] *Ibid.*, p. 146. (A copy of this page is attached as *Exhibit* 48.)

5.237 As the end of World War I approached, the Italian press and various governmental bodies started to give consideration to Libya and its future. Discussions concerning the Libyan hinterland and in particular, Borkou and Tibesti - perceived as a "legitimate reintegration of the Tripolitanian hinterland" - were energetically resumed[287]. Italian writers asserted that access to Lake Chad was a justifiable claim based on Italy's succession to the Ottoman Empire's rights in the area, which had been codified in the Treaty of Ouchy[288].

5.238 A new liberal trend developed in Italy as reflected in a report of the Minister of the Colonies, Colosimo, to the Italian Chamber of Deputies in 1918, affirmed that Rome intended to govern the country with the cooperation of the indigenous chiefs which has been summarized in this way -

> "... while rejecting the theory of 'refoulement' and assimilation, (it) put into effect a policy of association aiming at bringing closer together the Italians and the natives[289]".

Italian policy was in effect split between the ideals of Wilsonian liberalism and Italy's imperialistic ambitions. This was particularly evident in Tripolitania, where, notwithstanding the presence of 80.000 men ready for the occupation of the territory, the Italian Government opted for a peaceful solution and entered into the Agreement of Kallet-al-Zaituna with Arab leaders.

5.239 This Agreement was signed in the spring of 1919 and its terms were further implemented in the summer by a Constitutional Charter that granted to the inhabitants of Tripolitania a number of privileges, which included:

- Italian citizenship to the people of Tripolitania;
- A Parliament composed of representatives elected by the population;

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[287] See, Rosso, G.A.: I Diritti d'Italia Oltremare, Rome, l'Italiano, 1916, p. 31.

[288] See, generally, para. 5.158, above.

[289] Atti Parlamentari. Legislatura XXIV, 23 February 1918. Camera dei Deputati - N. LV, p. 19. (A copy of this page is attached as Exhibit 49.)

- Tax exemption.

In reality, these attributes of democracy were window dressing; and Italian citizenship was hardly an attractive opportunity to many Libyans. The Parliament did not even have the same powers of initiation, ratification and deliberation as Western parliaments, and its functions were extremely limited.

5.240 On 31 October 1919, Italy issued a Royal Decree extending to Cyrenaica the political privileges already granted to the neighbouring region of Tripolitania[290]. The Senoussi were irritated by the Decree, for it implicitly affirmed Italian sovereignty over Cyrenaica. The *sheikhs* of Cyrenaica issued a manifesto declaring that Italian occupation could only be recognized in the coastal region and then only for commercial purposes. This manifesto, later perceived by writers close to the Fascist regime as an overt rebellion against Italian sovereignty, opened the way in 1919 to new negotiations between Italy and the Head of the Senoussi resulting in the al-Rajma Treaty of 25 October 1920, which superseded the *modus vivendi* of Acroma[291].

5.241 If there were doubts about its benefits for the Libyan people, the al-Rajma Treaty certainly was beneficial to Idris. It conferred on him the hereditary title of "Senoussi Emir" and the status of "Head of the autonomous administration of the oases of Djaraboub, Aujila, Jalu and Koufra, with the possibility of adopting Ajadabiya as the seat of the administration of those oases" While the Emir had the obligation to raise the Italian flag over those territories, at the same time, the Treaty conferred a number of privileges and honours on both the Emir and his family such as monthly allowances, the salute of the guns for the Emir during official visits, the place of honour after the Governor at official ceremonies, *etc*. The Italian Government undertook to grant the Emir full liberty of movement, the right to use his own flag in the autonomously administered areas, and the right to give his advice every time the Italian Government proposed to issue a new legislative measure concerning the oases. Italy also was to allow the population to keep their arms and to continue to be exempt from taxation as well as from the military service.

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[290] A copy of the Decrees over Tripolitania and Cyrenaica are attached as *Exhibit* 50.

[291] Treaty of al-Rajma of 25 October 1920, *International Accords and Agreements Annex*, No. 19.

5.242 In exchange for these concessions, the Emir undertook: (i) to cooperate with the Italian Government in applying the Constitution and in suppressing the Senoussi armed camps, as well as any political administrative or military organization that did not fall under his administration; and (ii) to use his influence to encourage the public works necessary for the modernization of the country. The Emir was allowed to maintain for his protection an army of 1,000 men, subject to increase by mutual agreement; and he undertook to abstain from imposing taxes other than for the collection of religious dues.

5.243 It was subsequently to be viewed in some Italian circles that the Italian Government, in accepting the Treaty, had agreed to terms that were humiliating to the prestige of a colonial Power: in exchange for what was seen as an explicit recognition of Italian sovereignty over the coastal region of Cyrenaica, the Senoussi obtained implicit recognition of the sovereignty of the Head of the Order. During the Fascist period, the Treaty was strongly criticized as a serious offence to Italy's national pride; some writers went so far as to say that "our colony was thus divided up into two zones: one of direct Italian administration and one of Senoussi administration[292]". From the Libyan side, there was equally harsh criticism. Nevertheless, there can be no doubt that under the terms of the Treaty the Head of the Order was treated as a political leader; and certainly the administrative and political character of the Order, rather than its religious side, was emphasized in the Treaty.

5.244 Eight months after the signature of the Treaty, Idris had still not fulfilled the obligation of dissolving the armed Senoussi camps. When questioned by the Italian Government, he justified his inaction by stating that he feared that the implementation of the Agreement might cause a rebellion against his authority. The Senoussi camps were in fact a central element in the newly developed political organization of the Senoussi, for the camps assured control over the country through the administration of justice and the collection of taxes.

5.245 A new Agreement signed at Bu Maryam on 11 November 1921 provided for joint Italo-Senoussi control of the armed camps, which were put on the Italian payroll. The creation of what became known as the "mixed camps" was an admission by the Italian administration of its inability to establish its authority over the country without Senoussi cooperation. In practice, the administration of the country was left almost entirely under Senoussi control. However, the Bu-Maryam Treaty became the last act under Italy's policy of pacification; for with the advent of Fascism in 1922, a new colonial era began for Italy - an era of military conquest.

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[292] Ausiellog G.: La Politica Italiana, Rome, Tipografia Don Guanella, 1939, p. 175. (A copy of this page is attached as Exhibit 51.)

5.246 On 6 March 1923, the Italians seized the "mixed camps" and took half of the Senoussi soldiers prisoners. On 1 May 1923, the new Governor of Libya, General Bongiovanni, formally declared null and void all the agreements made between the Italian Government and the Senoussi. Idris, who at that time was in Cairo, remained in exile; before he fled the country, he had been proclaimed Emir of all Libya by Tripolitanian leaders[293]. The proclamation of Idris as Emir of Libya, not just by the notability of Cyrenaica, but by the Tripolitanian leadership, symbolised the fact that the Senoussi leadership extended to all of Libya. On the eve of the second Italo-Senoussi war, which lasted from 1923 to 1932, the Senoussi had achieved the status of a virtually autonomous government. This was confirmed by the fact, as noted in Part IV, that the Senoussi were in the forefront of the fight of the Libyan people against the attempt by the Fascist leadership of Italy to subjugate them. Such Senoussi heroes as Omar el-Mukhtar - the sheikh of a Senoussi zawiyia - led the battle against the Italian forces; and in the face of adversity, the identity and autonomy of the Libyan people under the Senoussi banner was strengthened as Libya began its march to freedom and independence, finally to be achieved in 1951.

Section 14. Continuing Franco-Italian Negotiations (1920-1934)

5.247 In the meantime, the upshot of the meetings in 1919 of the Colonial Commission, convened to consider what to offer Italy under Article 13 of the 1915 secret Treaty of London, was that Great Britain was considered by Italy to have satisfied its obligations. In fact, Great Britain was to make one more boundary concession to Italy in the 1934 Italo-Anglo-Egyptian Accord as to the Libyan-Sudan boundary, which will be taken up in the next Section. France, on the other hand, had not offered what Italy considered to be very much during the Colonial Commission discussions, and the matter was left for direct negotiations between Italy and France. This had led to the 12 September 1919 Accord between France and Italy concerning the Algerian frontier from Ghadamès to Toummo. However, that Accord specifically stated that other boundary questions remained to be considered between the parties[294], for the Accord had not discharged France's obligations to Italy under Article 13. Italy made this very clear at the time; and the records of the Quai d'Orsay reveal that the French Government knew full well that other boundary questions remained to be discussed and that the rectification of the Algerian frontier in the 12 September 1919 Accord had not really constituted a concession to Italy since the need for some adjustment of that frontier had already been recognized by France as far back as 1914[295]. The best evidence of this is the fact that, right up until the 1935 Treaty of Rome, France and Italy engaged in an almost continuous series of negotiations that concerned, inter alia, the southern boundary of Libya. This fact also showed that, regardless of the statements it made publicly, the French Government was well aware that this boundary had not been fixed.

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[293] See, Evans-Pritchard, op. cit., pp. 152-155.

5.248 It bears repeating that, although these discussions between Italy and France were conducted generally within the framework of Article 13, this did not imply that existing boundaries were the subject of discussion and that the negotiations concerned the question of additional compensation to Italy under Article 13 by rectifying these boundaries in Italy's favour. As already pointed out[296], Article 13 was aimed primarily at resolving in Italy's favour unresolved boundary questions rather than at making gratuitous offers of compensation in the form of boundary rectifications.

5.249 According to the records of the Quai d'Orsay, Italian Foreign Minister Tittoni and French Ambassador Barrère met in Rome on 25 June 1919, on which occasion Tittoni conceded that Italy's request for Djibouti had been a mistake. He proposed to formulate certain new Italian proposals respecting Tibesti and Borkou[297]. After Barrère reported this, the French Ministry of Colonies was charged with conducting a study, described as follows -

> "... d'étudier les tracés de frontière qui pourrait être éventuellement choisis, en vue d'élargir le territoire italien, sans compromettre la

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[294] See, para. 5.169, et seq., above.

[295] See, e.g., para. 5.120, above.

[296] See, para. 5.152, et seq., above.

[297] See, para. 5.166, above.

> liaison entre l'Afrique Occidentale française et l'Afrique Equatoriale française[298]."

The study came up with six different possible boundary lines, none of which were recommended. In fact, no concrete proposals resulted from the study at the time. However, over the next several years, the boundary question was given a good deal of study by both French and Italian experts in preparation for further negotiations that were to begin soon.

5.250 It is of interest to note that Lt. Colonel Tilho, who conducted the French study, had recently completed work for the Mission de l'Institut de France (1912-1917), which involved the detailed exploration and mapping of the regions of Tibesti, Borkou, Erdi and Ennedi. This work led to the publication of a map, which is reproduced here (Map No. 67). On Tilho's map, affixed to the southeast line of Article of the 1899 Declaration, as shown on that map, there appears the legend "frontière théorique". Tilho's work was completed before France sought to transform the "théorique" character of the southeast line into a definitive boundary by the "interpretation" of the southeast line in the final paragraph of the Anglo-French Convention of 8 September 1919, but the direction of the line on his map seems to coincide with the 1919 line. As already noted, Great Britain continued to regard this line as only indicating the limits of zones of influence[299], and Tilho's characterization of the line as "théorique" would appear to accord with the British view.

(a) Alternative Italian Programs

5.251 In Rome, proposals were being considered in the form of a maximum, medium and minimum program[300]. These were illustrated on maps issued by the Italian Ministry of Colonies based on the technical studies of the cartographic section of the Ministry of Colonies (M. Dardano). Replicas of these maps appear here as (Maps Nos. 68, 70 and 71). These maps have also been reproduced on Base Map B so as to portray more clearly the main features of the

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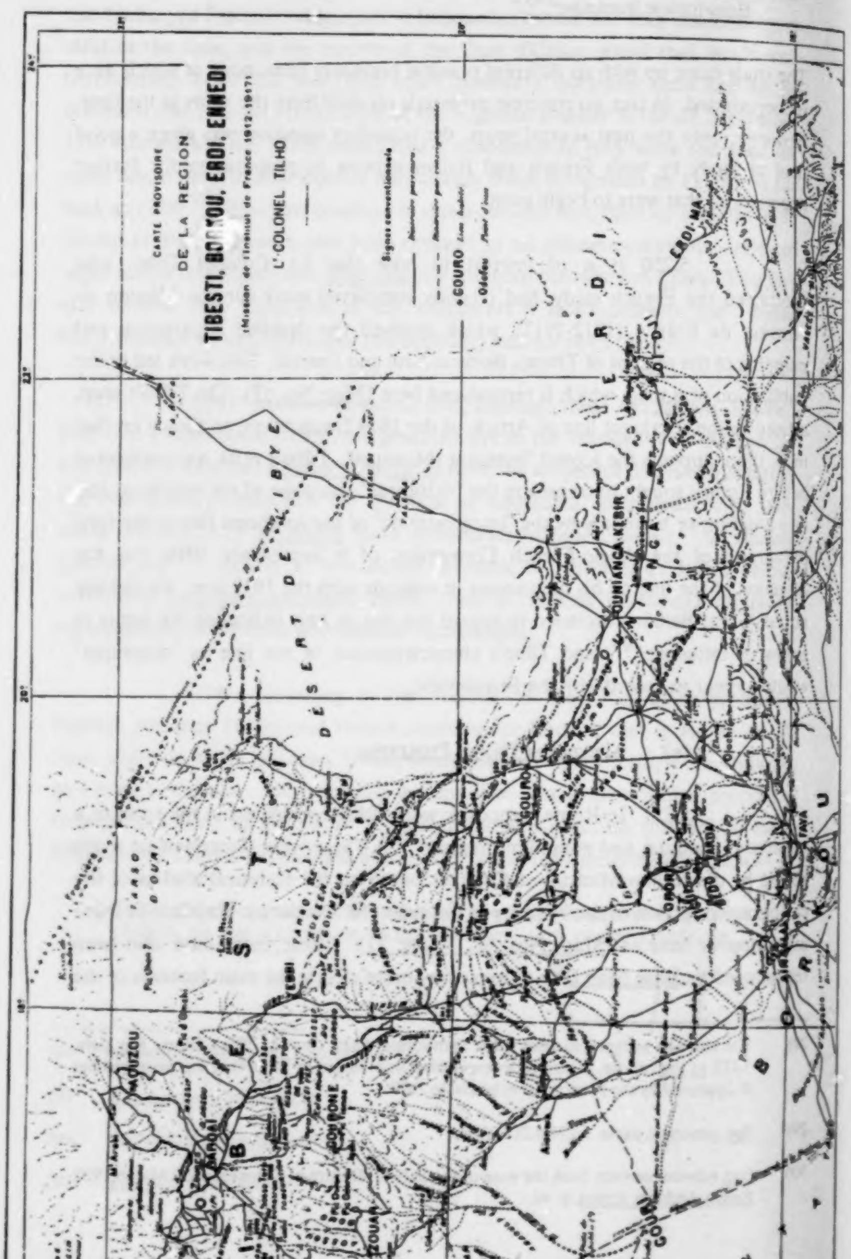
[298] The task was assigned to none other than former Capt. (now Lt. Col.) Tilho. See, para. 5.122, et seq., above, regarding an expedition into Tibesti by Tilho that was proposed but disapproved by the French Government in 1907.

[299] See, generally, paras. 5.174-5.217, above.

[300] See, relevant extracts from the note of the Italian Ministry of Colonies of 30 March 1928, Italian Archives Annex, p. 46.

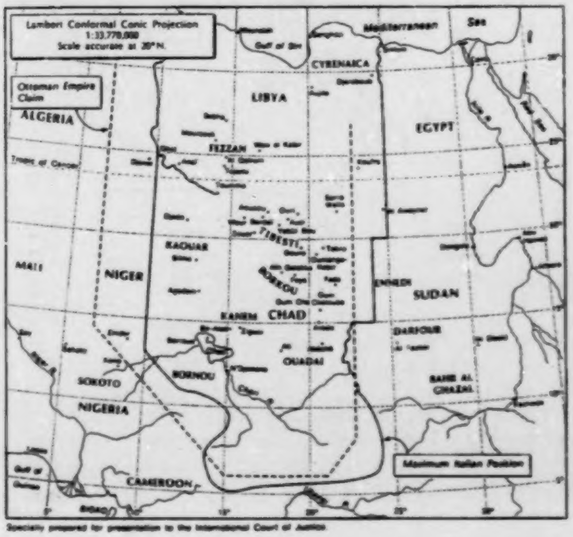
Map No. 67


CARTE PROVISOIRE
DE LA REGION
TIBESTI, BORKOU, ERDI, ENNEDI
(Mission de l'Institut de France 1912-1917)
L'COLONEL TILHO
Signes conventionnels
GOURO
DÉSERT DE LIBYE
TIBESTI
ERDI
ERDI-MA
OUNIANGA KEBIR
BORKOU
AOUZOU
BARDAI
ZOUAR
GOURO

original map and to identify and comment on certain of the lines. The basic Italian map on which the medium and minimum programs are shown is dated 1926 and is on a scale of 1:4,000,000. This map shows no boundary at all to the east of Toummo. This was an official indication by the Italian Government at the time that in the view of Italy no conventional boundary existed to the east of Toummo.

5.252 The maximum program, shown on Map No. 68, is compared on the map with the Ottoman Empire's claim of 1890, showing it to be roughly comparable. On the reproduction of this map, the 1890 Ottoman claim is illustrated by a dashed green line; the Italian program, by a solid red line. The Italian maximum program line and the Ottoman line are also compared on Map No. 69.

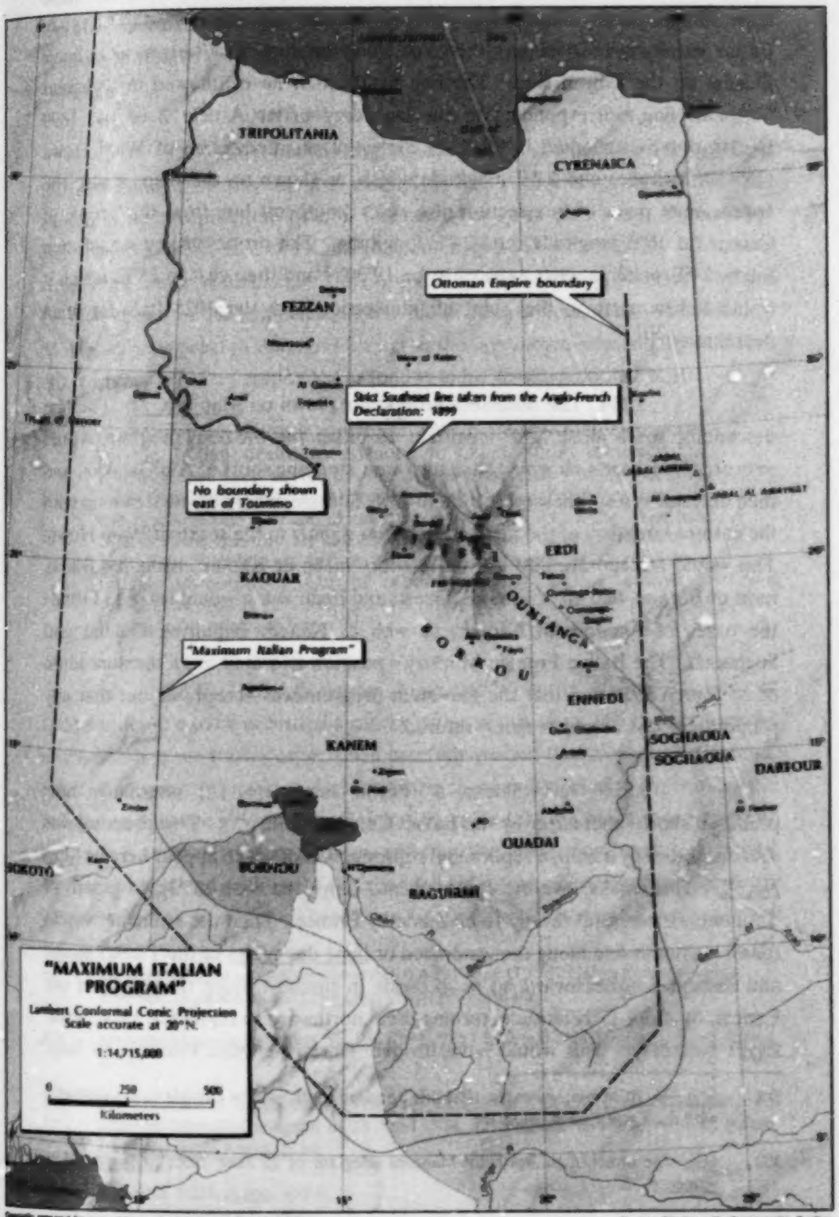
Map No. 69



Specially prepared for presentation to the International Court of Justice

5.253 The medium Italian program (Map No. 70) would have followed the existing boundary south from Ras Ajdir on the Mediterranean to its intersection with 10°E longitude (between Djanet and Ghat), descending south from there along that line of longitude to its intersection with the Nigerian

Map No. 68



Ottoman Empire boundary

Strict Southeast line taken from the Anglo-French Declaration: 1899

No boundary shown east of Toummo

"Maximum Italian Program"

Specially prepared for presentation to the International Court of Justice

Source: Dardano, M., Cartographic Section, Italian Ministry of Colonies, 1926

boundary (that is, the Say-Barroua line); then east through Lake Chad so as to leave Kanem on the Libyan side; then southeast to approximately 12°N latitude (in the vicinity of N'Djamena); then east along that line of latitude so as to leave Ouadaï on the Libyan side. The line would then have followed an irregular northeast line, corresponding to the boundary under Article 2 of the 1899 Declaration as delimited in 1919, to the point of intersection of Wadi Howa (15°45'N latitude) and 24°E longitude which, as shown on the map, is also the approximate point of intersection of a strict southeast line from the Tropic of Cancer (at 16°E longitude) and 24°E longitude. The proposed line would then follow 24°E north to what appears to be 19°30'N and then east to 25°E, which it would follow north to the point of intersection with the 1925 Italo-Egyptian delimitation[301].

5.254 The minimum program is shown on Map No. 71. The line descending south along 10°E longitude, as under the medium program, would stop at 18°N latitude. It would then turn east, stopping short of Aïn Galakka, and then descend in a southeast direction to 15°N latitude, where it would join up with the eastern boundary of the medium program slightly to the south of Wadi Howa. This would incorporate into Libyan territory much of Kaouar, including Bilma, most of Borkou, and all of Ennedi, Tibesti and Erdi; and it would leave to France the oases of Agadem in Kaouar, as well as Kanem Baguirmi, Ouadaï and Soghaoua. The Italian Foreign Ministry's position as stated in its memorandum of 30 March 1928 was that the minimum program was acceptable but that any proposal for less should be firmly refused.

5.255 Nevertheless, a fourth, more modest, alternative was prepared shortly thereafter by the Italian Colonial Office[302]. This proposal was also illustrated by a map, a replica and reproduction of which appear here as Map No. 72. This would have incorporated into Libya the oasis of Djado (south of Toummo), a proposal shortly to be made by France. Then the boundary would follow a sinuous line along the watershed or ligne des crêtes of the Tibesti massif and descend southeastward, so as to divide in similar fashion the massif of the Ennedi, to about 17°N latitude, turning then northward to rejoin the 1924 Libya-Egypt boundary. This would have divided Tibesti between France and Italy, would have left Borkou largely to France, Ounianga to Italy, would have divided Ennedi and would have left Erdi to Italy. The suggested line is shown on the map in juxtaposition to a strict southeast line and to the 1919 "interpretation" of the 1899 line[303].

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[301] Map No. 70, in fact, shows the 1924 line extended south to 22°N latitude so as to coincide with the Egypt-Sudan boundary.

[302] See, note attached to Berthelot-Manzoni telegram of 25 June 1930, Italian Archives Annex, p. 72.

5.256 The Italian Ambassador in Paris, Manzoni, let the Quai d'Orsay know generally of the extent of Italy's proposed claim, and was subsequently informed that when it was made known to the French Cabinet that Italy claimed down to Lake Chad it created quite a stir, and the claim was considered totally inadmissible[304]. (Apparently, the minimum proposal had not been described by Manzoni since its line did not descend south of 18°N latitude.) Mussolini, acting also as Foreign Minister at the time, when informed by Manzoni of the French reaction, responded as follows to his Ambassador in Paris:

> "I approve the fact that your Excellency has based the negotiations on the Italian desire to advance to Chad, since, although the expression of such desire has greatly surprised the French Cabinet, it has however eliminated the illusion of the possibility to conclude the negotiations at a ludicrous price and it will focus the attention of this Government on the actual importance of the problem of Italo-French relations and on the sacrifices necessary to achieve a satisfactory solution. On the other hand, for tactical reasons, it should eventually be easier for us, after our maximum request, to fall back on medium lines[305]."

5.257 These programs formulated by the Italian Ministry of Colonies deserve to be accorded a special status in this case. They were prepared at a time when the Italian experts had carefully studied the relevant background, history and geography and had acquired much more knowledge concerning the indigenous peoples; in particular they had examined the Italian heritage of rights and titles from the Ottoman Empire; and thus they were more representative of the background and realities of the situation than were the programs assembled just after World War I[306]. These were internal Italian studies of a preparatory

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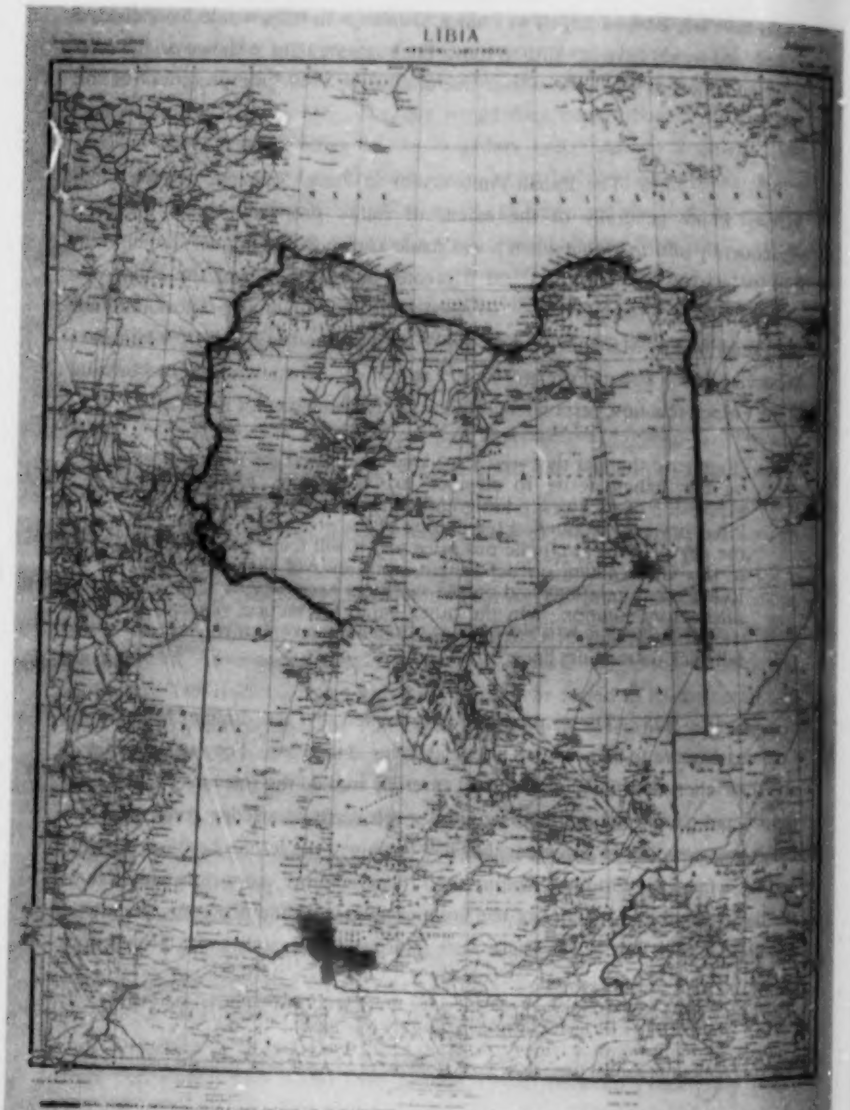
[303] The map's legend erroneously describes the 1919 line (19°30'N latitude) as being the 1899 line, as shown on the Livre jaune map (19°N latitude).

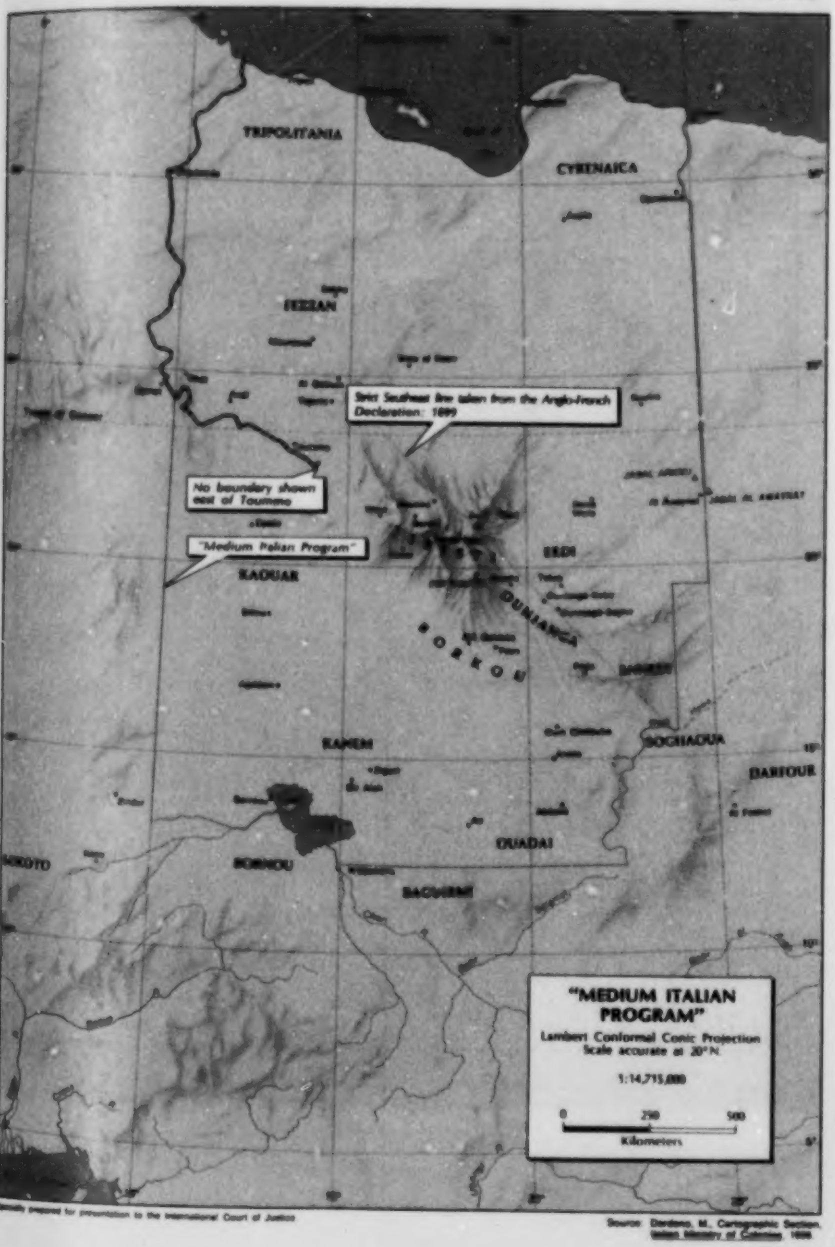
[304] Manzoni-Mussolini telegram No. 2351/399/207 of 23 April 1928, Italian Archives Annex, p. 52.

[305] See, reference to this document (Telegram No. 2010 of 27 April 1928) in Footnote (1) of Manzoni-Mussolini telegram of 23 April 1928, as translated into English from Italian, Italian Archives Annex, p. 54.

[306] See, para. 5.158, et seq., above.


LIBIA

Map No. 7C



Strict Southeast line taken from the Anglo-French Declaration: 1899

No boundary shown east of Toummo

"Medium Italian Program"

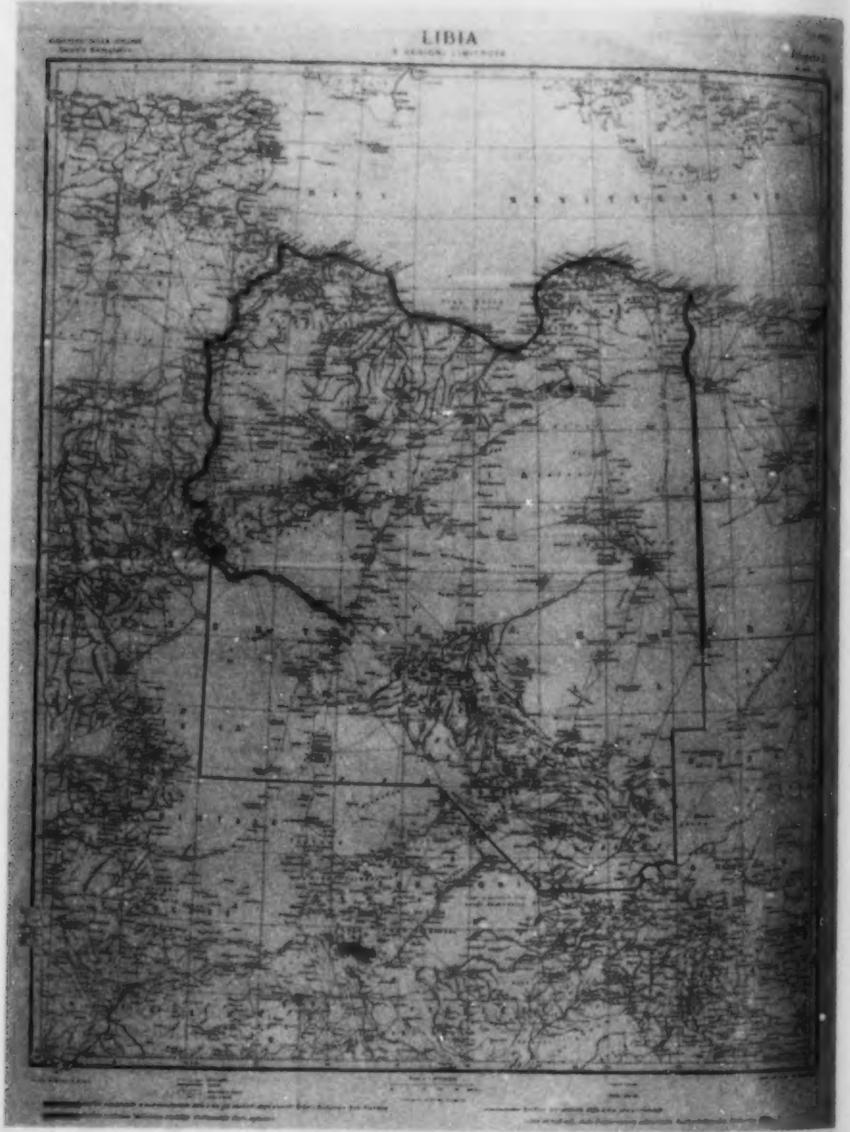
"MEDIUM ITALIAN PROGRAM"

Lambert Conformal Conic Projection
Scale accurate at 20°N.

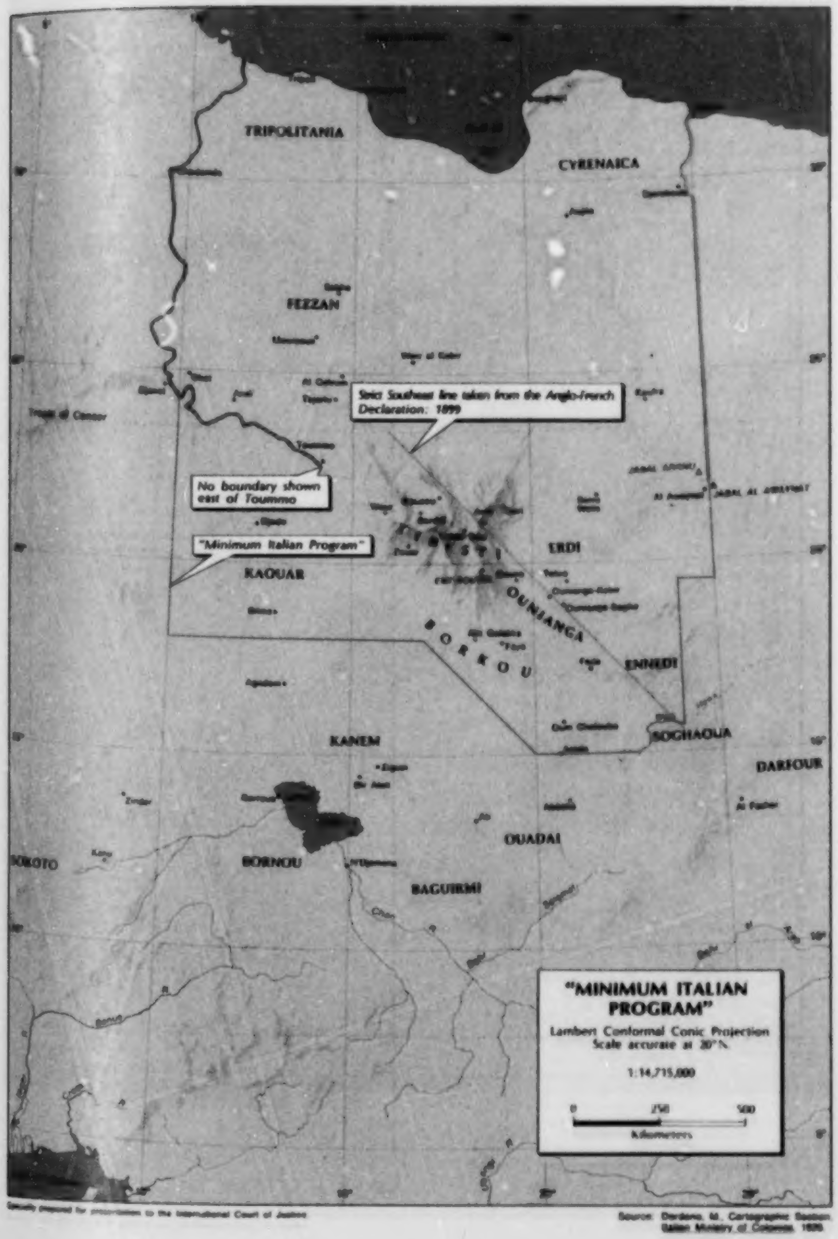
1:14,715,000

Specially prepared for presentation to the International Court of Justice

Source: Dardano, M., Cartographic Section, Italian Ministry of Colonies, 1930

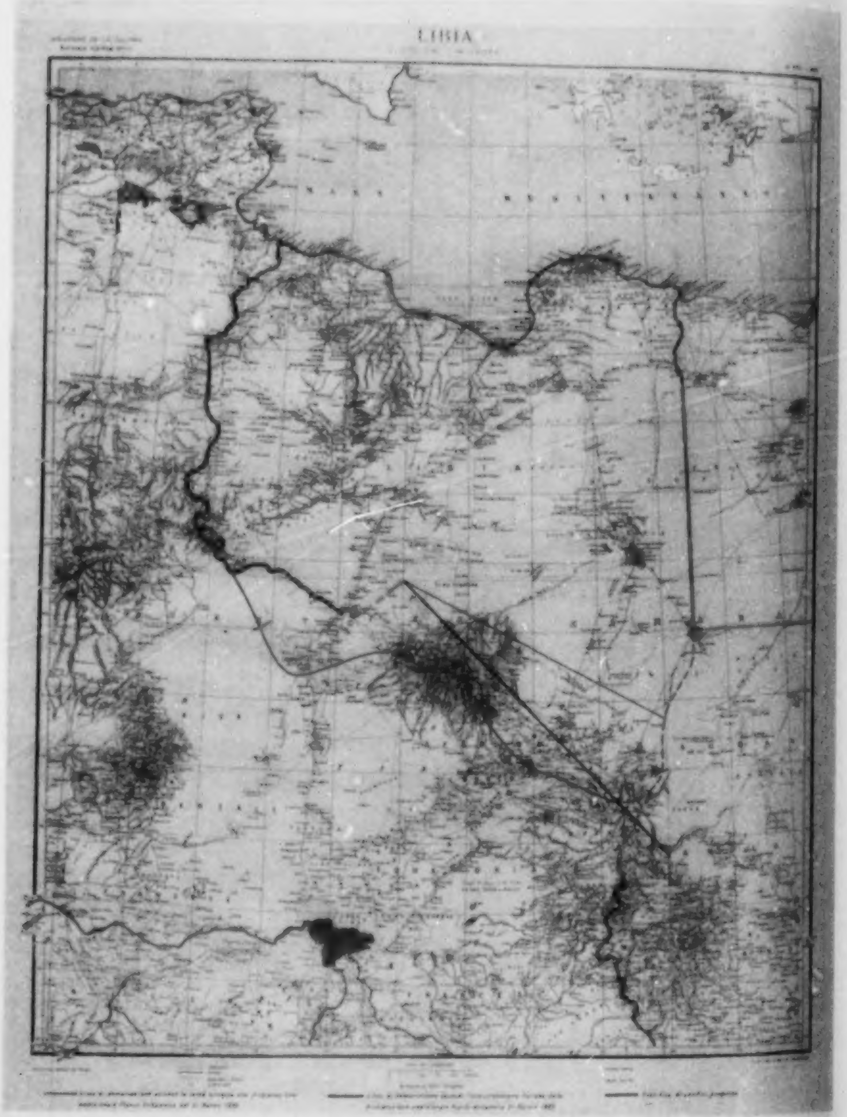

LIBIA
E REGIONI LIMITROFE

Map No. 71

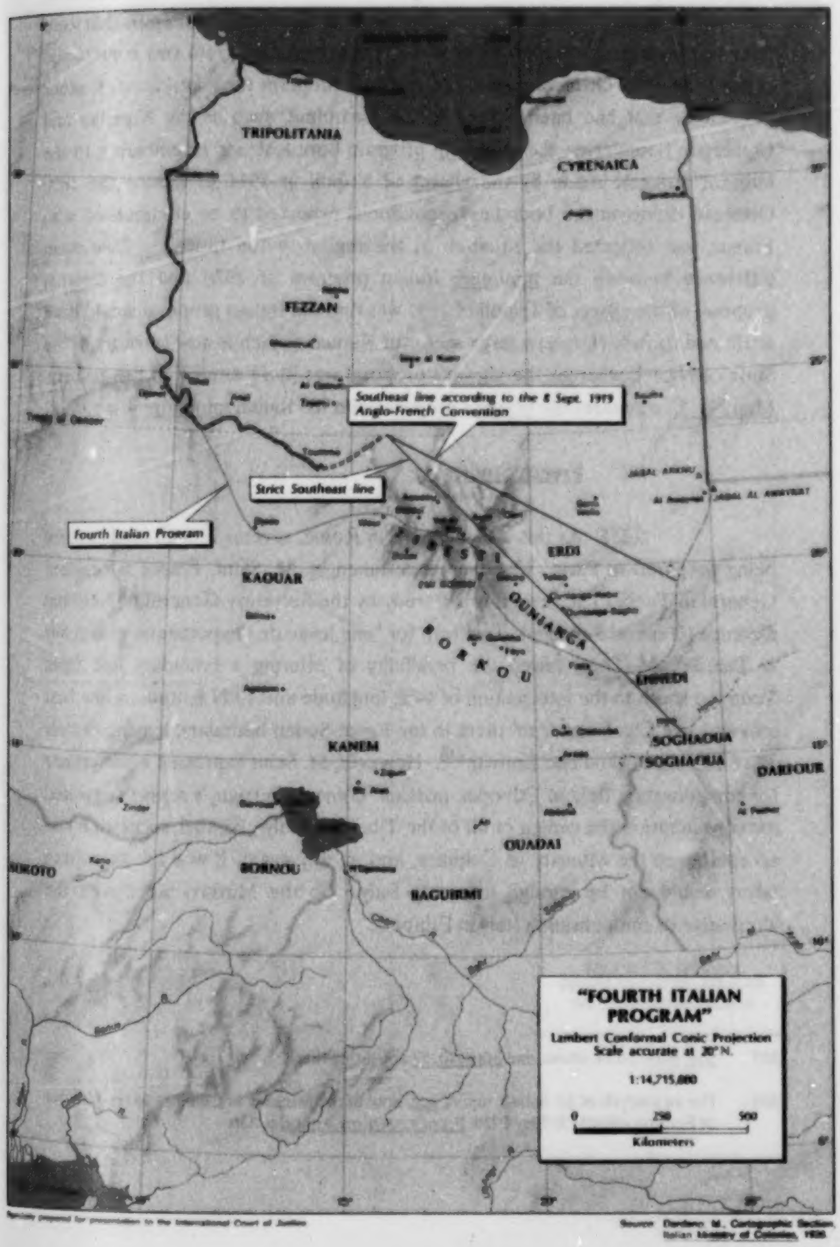


Specially prepared for presentation to the International Court of Justice

Source: Dardano, M., Cartographic Section
Italian Ministry of Colonies, 1935


LIBIA

Map No. 72



Specially prepared for presentation to the International Court of Justice

Source: Dardano M., Cartographic Section, Italian Ministry of Colonies, 1926 nature, not proposals advanced in negotiations with France. As a result, they were relatively free of political considerations and the sorts of trade-offs that were later to play such an important role. The maximum program was constructed around the 1890 Ottoman claim; the medium program took into account other boundaries that had been agreed in the meantime, such as the Nigerian and Cameroon boundaries; the minimum program bore a strong resemblance to the internal proposal made by the vilayet of Tripoli in 1911 to reduce the 1890 Ottoman claims in the boundary negotiations expected to be commenced with France that reflected the situation in the region at the time[307]. The main difference between the minimum Italian program of 1928 and the internal proposal of the vilayet of Tripoli of 1911 was that the Italian proposal would have attributed to Italy (Libya) a large sector of Kaouar (which is now territory of the State of Niger), whereas the vilayet's proposal was more modest in this respect. Map No. 73 compares the vilayet's proposal with the Italian minimum program.

(b) French Studies

5.258 As this was going on in Rome, several French studies were being prepared in Paris. One was undertaken by M. Saint, France's Resident General in Tunis. The second was a study by the Secretary General of National Defence (General Serrigny). In return for "une levée de l'hypothèque pesant sur la Tunisie", M. Saint raised the possibility of offering a boundary line from Toummo south to the intersection of 14°E longitude and 13°N latitude, a line that crosses Lake Chad, and from there to the Egypt-Sudan boundary, leaving to Italy all of Tibesti, Borkou and Ennedi[308]. However, M. Saint expressed a preference for compensating Italy in Ethiopia, instead. General Serrigny's report suggested for consideration the ceding of all of the Tibesti to Italy. Neither suggestion was acceptable to the Ministry of Colonies; and, in any event, it was felt that these offers would not be enough to satisfy Italy. So the Ministry sided with the alternative of compensating Italy in Ethiopia.

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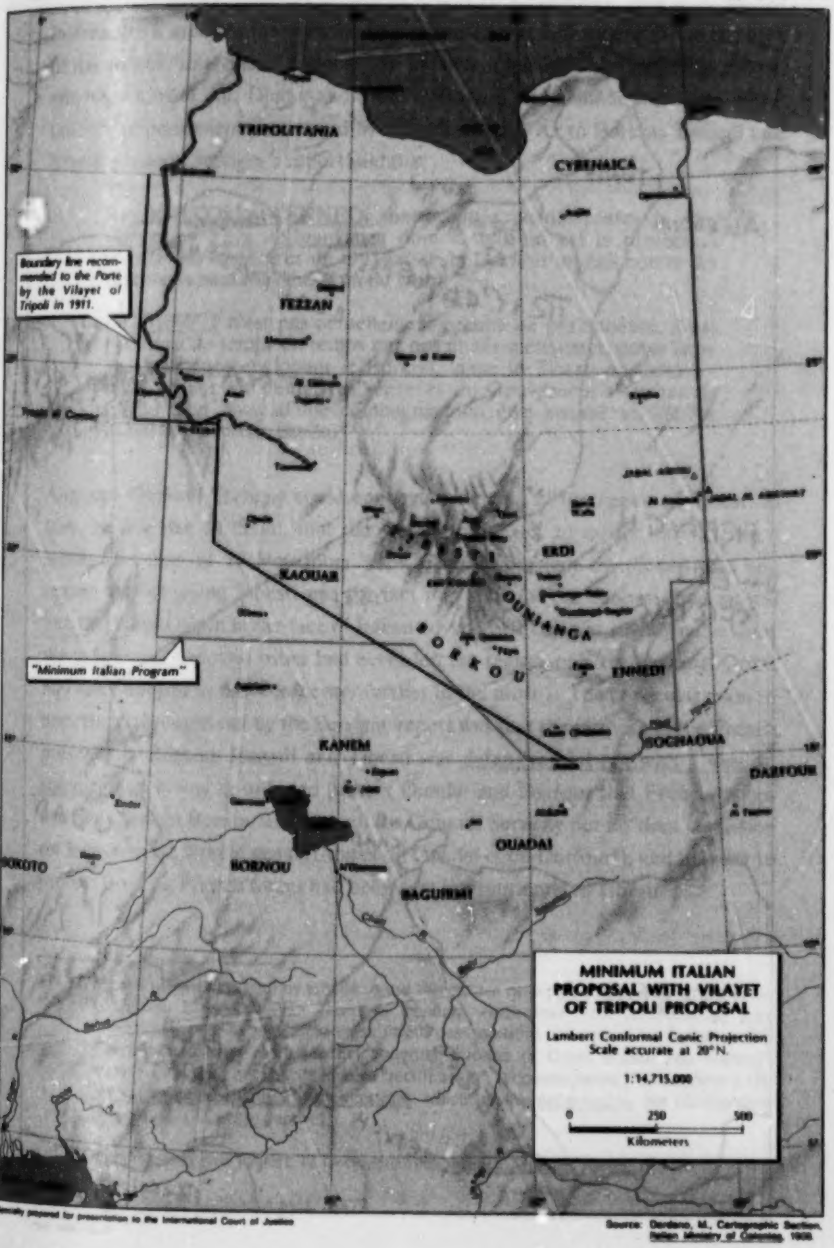
[307] See, para. 5.114, above, and Map No. 52 appearing there.

[308] For an analysis of M. Saint's report, see, note of the Minister of Colonies to the Minister of Foreign Affairs, 30 May 1928, French Archives Annex, p. 336.

Map No. 73



MINIMUM ITALIAN PROPOSAL WITH VILAYET OF TRIPOLI PROPOSAL

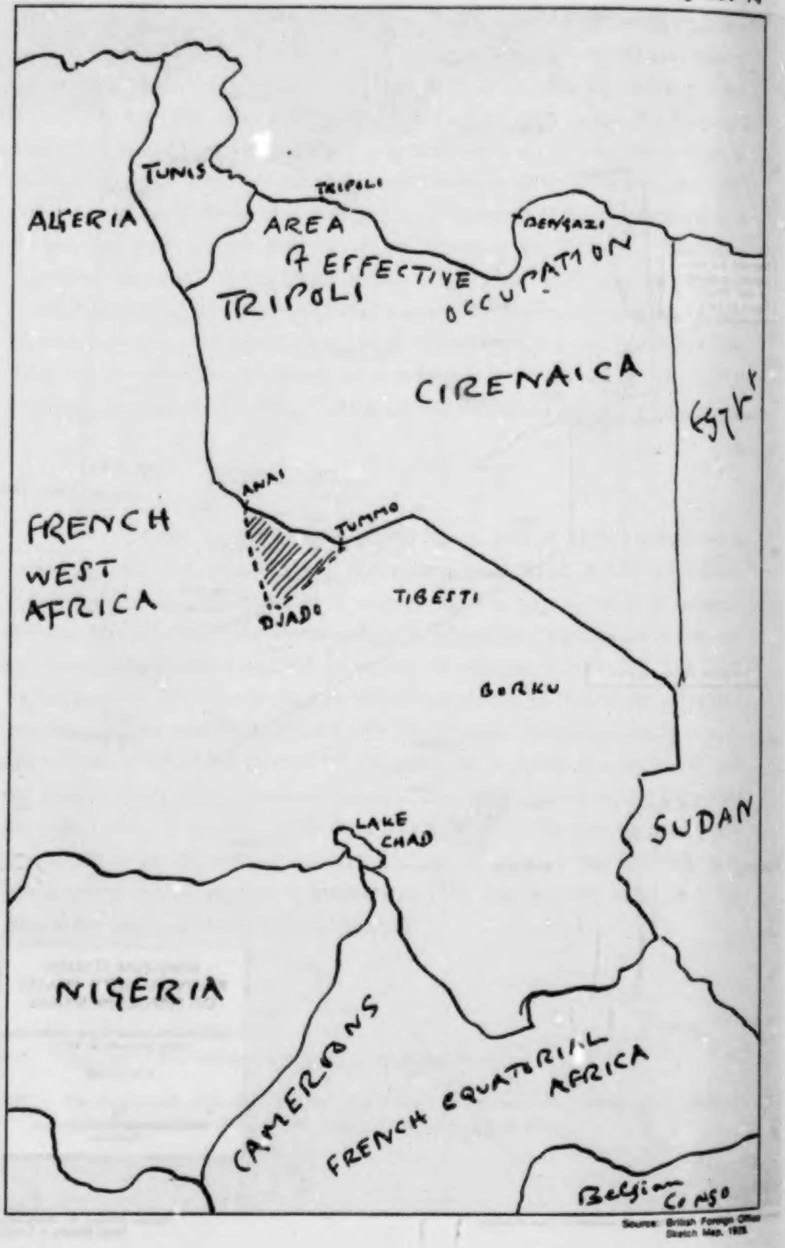
Lambert Conformal Conic Projection
Scale accurate at 20° N.

1:14,715,000

ally prepared for presentation to the International Court of Justice

Source: Dardano, M., Cartographic Section, Italian Ministry of Colonies, 1938

Map No. 74



Source: British Foreign Office
Sketch Map, 1935

5.259 General Serrigny's report of 12 October 1928 is of special interest, for it analyses the question of "rectification de la frontière"[309] in the light of the security interests of France. An important fact emerges from this report: only the oases of Aïr, Djado, and those in Borkou and Ennedi, were said at the time to be permanently occupied by French troops. As to Borkou, Ennedi and Tibesti, General Serrigny's report said this:

> "Le BORKOU et l'ENNEDI sont occupés par nos postes de Aïn-Galakha - Faya - Ouanyanga dont la mission est la protection directe des territoires du Ouadaï et du Darfour anglais contre les rezzous venant du Tibesti ou du Nord.
>
> Le TIBESTI n'est pas actuellement occupé en permanence, il est parcouru de temps en temps par nos unités méharistes, notre ligne de couverture englobant le Borkou, laisse le Tibesti en dehors - toutefois sur les demandes réitérées du Gouverneur Général de l'A.E.F., un poste d'une compagnie doit être installé en 1929 à Zouarka au sud de Bardaï[310]".

Although General Serrigny could envisage ceding all of the region of Tibesti to Italy, he felt, like M. Saint, that this would be unlikely to satisfy Italy[311]. In a subsequent note of 13 November 1928, General Serrigny mentioned that one reason for occupying Tibesti was the fact that some of the Senoussi had moved into the Tibesti again in the face of Italian advances. (This was slightly naïve since the indigenous Senoussi tribes had never left the region; only the Senoussi Order had been obliged to move its center further to the north). The particular point of importance brought out by the Serrigny report was that the purpose of the French presence in Borkou, Ennedi and Tibesti was defensive and not with a view to colonization: it was in order to protect Ouadaï and Darfour that French troops had been sent to Borkou and Ennedi (as General Serrigny put it: "dont la mission est la protection directe des territoires du Ouadaï et du Darfour"); and in order to protect Borkou, French forces had been sent intermittently to Tibesti.

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[309] French officials at the time tended to use this phrase rather loosely and not in the sense of Article 13 of the 1915 Treaty of London, which dealt with compensating Italy "notamment dans le réglement en sa faveur des questions concernant les frontières des Colonies Italiennes (with the neighbouring colonies of Great Britain and France)". Article 13 did not necessarily involve "rectification"; it contemplated ("notamment"), the resolution of existing boundary questions, which implies delimitation, not rectification. See, para. 5.172, et seq., above.

[310] General Serrigny's Report, 12 December 1928, French Archives Annex, p. 379.

[311] Ibid., French Archives Annex, p. 377.

(c) France's 1928 Proposal

5.260 On 6 August 1928, at a meeting with Mussolini, Ambassador Beaumarchais presented on an informal basis a draft treaty for study by the two Governments. It contained a specific proposal to cede the oasis of Djado to Italy[312]. This proposal had apparently been suggested by Mussolini himself the month before[313]. The area covered by the proposal is shown on Map No. 74, a replica of a sketch map prepared by the British Foreign Office, which was being kept abreast of the discussions by the French[314]. Beaumarchais said that, in exchange for Djado, France wanted Italy's recognition that the French Government "avait satisfait aux exigences du Pacte de Londres de 1915". He added that France also wanted Italy's recognition of the 1899 Anglo-French Declaration. Beaumarchais' conditions show that the French Government was aware that, prior to the Djado proposal, France had not discharged its obligations to Italy under Article 13 of the Treaty of London. Of particular interest is the other condition attached to ceding Djado: that Italy recognise the Anglo-French Declaration of 1899 "relatif aux frontières de la Tripolitaine". This was an admission that, notwithstanding France's arguments concerning the meaning of the 1900-1902 Franco-Italian Accords, the application of the 1899 Anglo-French Declaration to the boundaries of Tripolitania was by no means certain, and that, accordingly, France wanted Italy to recognize that the Declaration did establish these boundaries. A final condition concerning the boundary was that Italy effectively occupy Djado. This condition brings out the extent to which France had been unable to suppress the hostility of the indigenous tribes. Other matters relating to Tunisia were discussed as part of the package. Mussolini was said to have listened attentively but not to have stated his views at the time.

5.261 After this meeting, the proposed offer was given further consideration by the French Minister of Colonies[315]. The latter took the following position, as explained to Ambassador Beaumarchais by the Quai d'Orsay:

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[312] See, Beaumarchais-Briand Letter, 7 August 1928, French Archives Annex, p. 360.

[313] See, note of 12 July 1928 as annexed to Letter of 23 August 1928, French Archives Annex, p. 368.

[314] See, the map attached to the internal Foreign Office memorandum on the Franco-Italian negotiations, dated 23 October 1930, British Archives Annex, p. 197.

[315] See, Letter to Beaumarchais of 23 August 1928, French Archives Annex, p. 366.

> "Comme vous le verrez, M. Léon Perrier n'admettrait de céder l'oasis de Djado à l'Italie que le jour où cette Puissance serait en mesure d'occuper l'oasis. Si une rectification de frontière sans obligation d'occupation immédiate devait être consentie, mon collègue la rechercherait plutôt du côté du Tibesti.
>
> Le Ministre des Colonies insiste d'ailleurs pour que l'arrangement à conclure, quel qu'il soit, comporte la reconnaissance par le Gouvernement italien de l'interprétation donnée par la Convention franco-anglaise du 8 septembre 1919 à l'article 3 de la Déclaration du 21 mars 1899[316]".

So the Minister of Colonies (M. Perrier) wanted to go one step further; he also wanted Italy's recognition of the interpretation of Article 3 of the 1899 Declaration contained in the last paragraph of the Anglo-French 1919 Convention. With the prospect of obtaining Italy's signature on a boundary concession in its favour, the various private doubts of the French experts over publicly announced theories concerning the Libyan boundary were coming to the surface, for they saw here an opportunity of settling these questions once and for all. The ever-vigilant French Colonial Ministry obviously knew where the weak spots were in its thesis as to the southern boundary of Libya, and it wanted to resolve them in this treaty with Italy.

5.262 Apparently, by October 1928 the Minister of Colonies had come to accept the cession of Djado to Italy, although he expressed doubts that this would satisfy Italy[317]. In this regard, Ambassador Beaumarchais made this interesting observation to the French Minister of Foreign Affairs, M. Briand:

> "M. le Ministre des Colonies désirerait également voir reconnaître par le Gouvernement italien la ligne fixée par la Convention franco-anglaise du 8 septembre 1919. Je lui ai exposé que cette concession risquait de nous être refusée par les services de M. Mussolini: la ligne indiquée par la déclaration additionnelle du 21 mars 1899 à la Convention franco-anglaise du 14 juin 1898, et tracée sur la carte annexée au Livre jaune[318] n'est plus intangible, puisque nous avons admis une modifications à notre avantage. Les Italiens ont, dans ces conditions, un semblant de droit à demander qu'une modification favorable à leur interprétation soit substituée à l'interprétation du 8 septembre 1919.

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[316] Ibid.

[317] Beaumarchais Letter, to Quai d'Orsay, 20 October 1928, French Archives Annex, p. 372.

[318] Evidently Beaumarchais knew no map had been annexed to the Declaration itself.

> M. Léon Perrier en a convenu et il ne paraît pas irréductiblement hostile au principe d'un arbitrage sur ce point, si l'heureuse issue de tous les pourparlers devait résulter d'une concession sur cette partie de la négotiation. Il demeure bien entendu que je commencerai par demander la reconnaissance de la ligne fixée par la Convention franco-anglaise du 8 septembre 1919 et que je ne me départirai pas de cette attitude sans l'autorisation expresse du Gouvernement".

This revelation of Beaumarchais shows how insecure the French Government was as to the "interpretation" of the 1899 Declaration set out in the 1919 Convention that resulted in the southeast line being shifted northward so as to intersect 24°E longitude at 19°30'N latitude[319]. For according to Article 13 of the 1915 Treaty of London, this was the sort of boundary question to be resolved in Italy's favour. Yet it had been resolved in France's favour by an agreement between Great Britain and France in 1919 as to which Italy had not been informed and only became aware of in 1921.

5.263 In a note verbale addressed to the Italian Prime Minister dated 21 December 1928, Ambassador Beaumarchais formally presented France's offer, to which two draft treaties were attached - one concerning Tunisia, the other concerning the Tripolitanian boundary[320]. The territory "ceded" by France under Article 1 of the draft boundary treaty would have resulted in a modification of the boundary that had been fixed by the Franco-Italian Accord of 12 September 1919 so as to leave In Ezzam in French territory and Djado and Toummo in Italian territory. The proposed boundary was shown on an annexed map[321]. It also was sketched out on a map prepared by the British War Office in 1930, which appears here in two forms: as a replica of the original (Map No. 75A) and as a reproduction on Base Map B (Map No. 75B)[322]. The new boundary, according to Article 1 of the draft treaty, would meet up with "la frontière tracée sur la carte jointe à la Déclaration franco-britannique du 21 mars 1899"[323]. Articles 2 and 3 merit particular attention. Article 2 read as follows:

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[319] Beaumarchais' report was confirmed by Perrier in a Dispatch to the Minister of Foreign Affairs dated 4 November 1928, French Archives Annex, p. 375.

[320] Beaumarchais Note Verbale of 21 December 1928, Italian Archives Annex, p. 55.

[321] To date, this map has not been uncovered in the archives.

[322] See, Memorandum on Franco-Italian negotiations and attached map, 23 October 1930, FO 371/14406, British Archives Annex, p. 189. The British Foreign Office was following the Franco-Italian discussions closely.

> "Les Hautes Parties Contractantes déclarent qu'en ce qui les concernent la clause formant l'article XIII du Traité signé à Londres le 26 avril 1915 a reçu complète satisfaction."

Article 3 read as follows:

> "Les Hautes Parties Contractantes conviennent que la ligne qui, à l'est de Tummo, marque la limite des possessions françaises, est la ligne définie par l'Accord franco-britannique du 9 septembre 1919, portant interprétation de la Déclaration franco-britannique du 21 mars 1899, reconnue par l'Italie en vertu de l'Accord franco-italien du 1er novembre 1902."

Thus, France proposed a formal, bilateral treaty in which it would be agreed (i) that Article 13 had received full satisfaction; and (ii) that not only had Libya's southern frontier been established by the line contained in the 1899 Declaration but by that line as "interpreted" in the 1919 Convention; and - in a further addition - that the 1899 line had been "reconnue par l'Italie en vertu de l'Accord franco-Italien du 1er novembre 1902". In this way, the French Government aimed to have all of its doubts cleared up, including those concerning the 1902 Accord.

(d) Italy's 1929 Counterproposal

5.264 Mussolini, acting as Foreign Minister, replied to the French proposal by note verbale of 29 June 1929[324]. He rejected the French proposal and the attached draft treaties which "ne répondaient pas entièrement à mon attente"[325]. Mussolini described Djado as a small oasis with only 600 inhabitants surrounded by an absolutely unusable zone of sand. He said that under Article 13 Italy should be given equitable compensation of real value. The note also rejected linking the Tunisian question and the boundary questions, as France sought to do.

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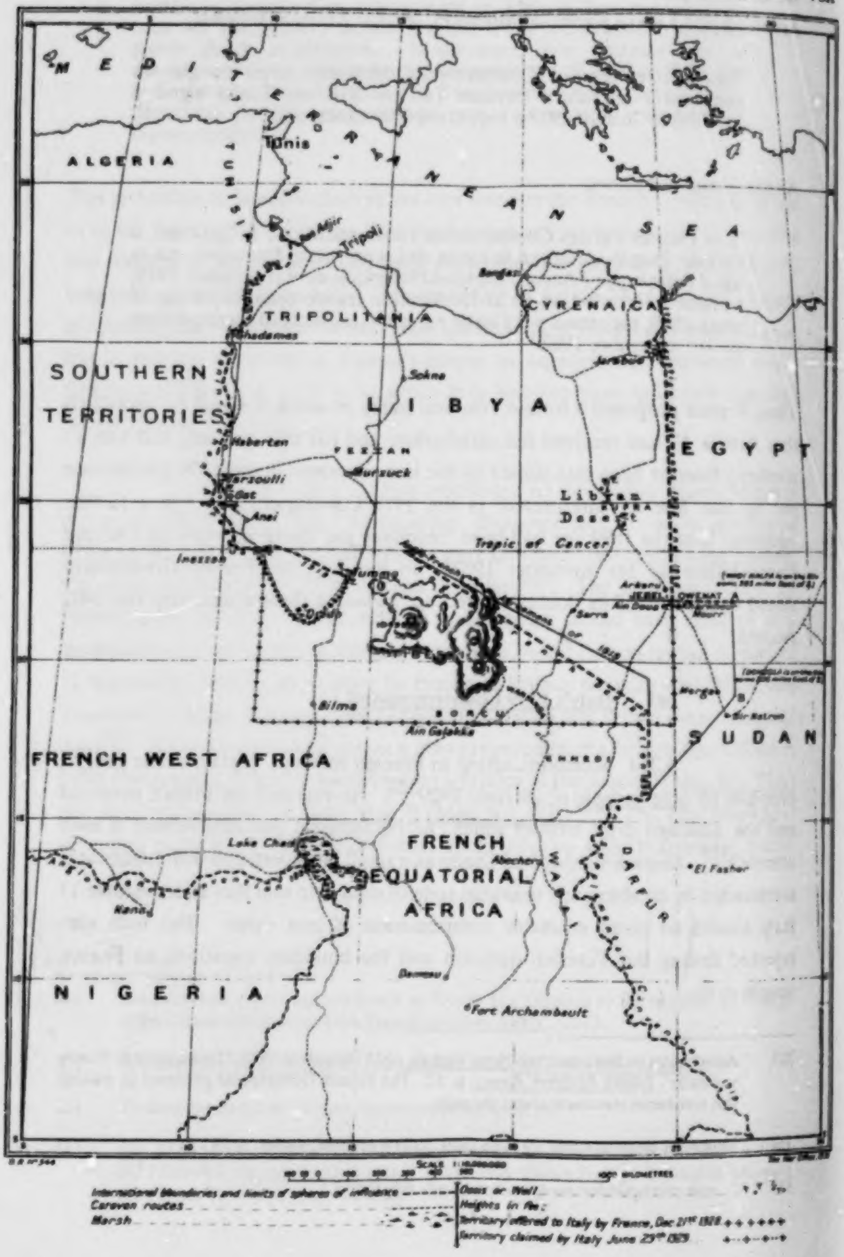
[323] Attachment to Beaumarchais Note Verbale of 21 December 1928, "Traité entre la France et l'Italie", Italian Archives Annex, p. 57. The French Government persisted in making this erroneous statement about the map.

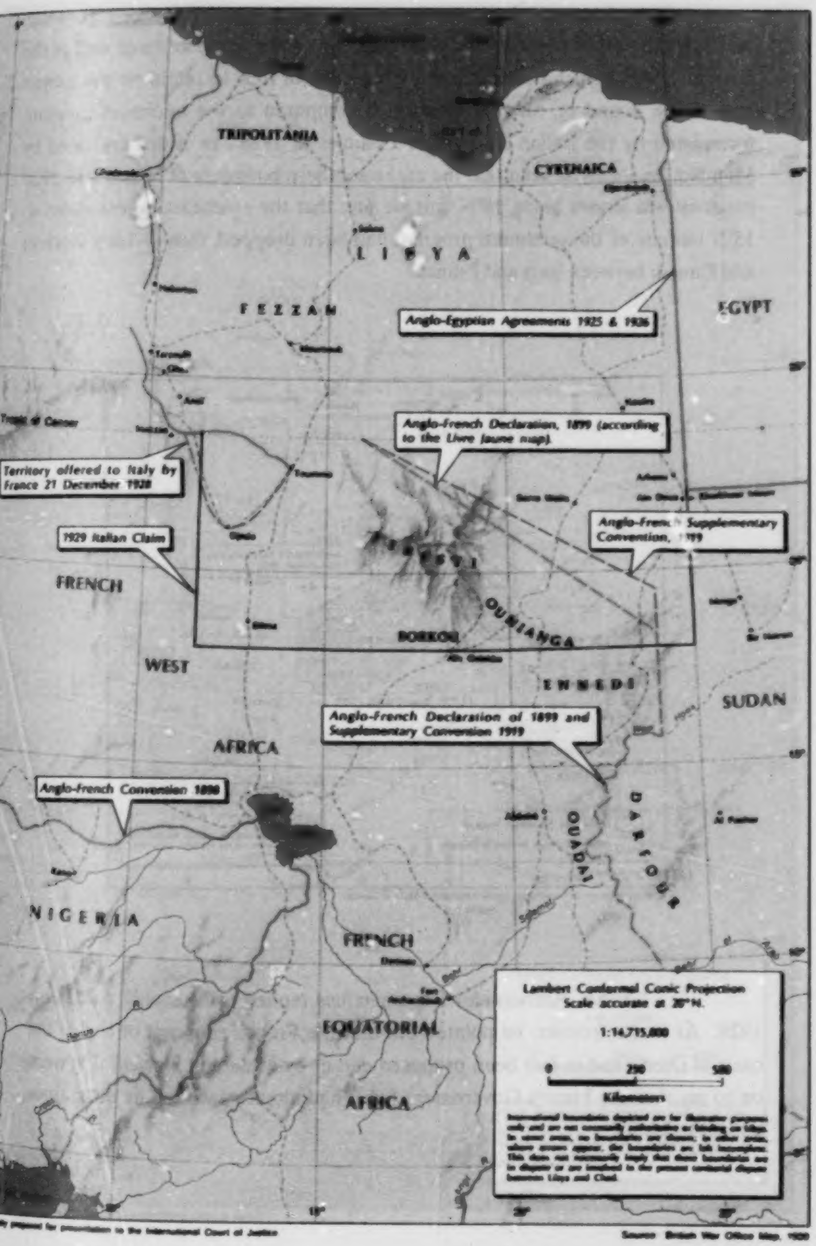
[324] Mussolini-Beaumarchais, 29 June 1929, Italian Archives Annex, p. 59.

[325] "... non corrispondevano del tutto alla mia aspettativa."

Map No. 75A


MEDITERRANEAN SEA
Tunis
ALGERIA
TUNISIA
Bou Adjir
Tripoli
Bengasi
CYRENAICA
TRIPOLITANIA
Ghadames
Jarabub
SOUTHERN
TERRITORIES
Sokna
LIBYA
EGYPT
Heberten
FEZZAN
Murzuck
Tarzoulli
Ghat
Anai
Libyan
Desert
Tropic of Cancer
Inesson
Tummo
Arkenu
JEBEL OWENAT
Ain Doua
Sarra
Merga
Bilma
BORCU
Ain Galakka
Bir Natron
SUDAN
FRENCH WEST AFRICA
ENNEDI
Lake Chad
FRENCH
EQUATORIAL
AFRICA
Abechera
WADAI
DARFUR
El Fasher
Kano
NIGERIA
Fort Archambault
SCALE 1:10,000,000
KILOMETRES
International Boundaries and limits of spheres of influence
Caravan routes
Marsh
Oasis or Well
Heights in fee
Territory offered to Italy by France, Dec 21st 1928
Territory claimed by Italy June 23rd 1929

Map No. 75B

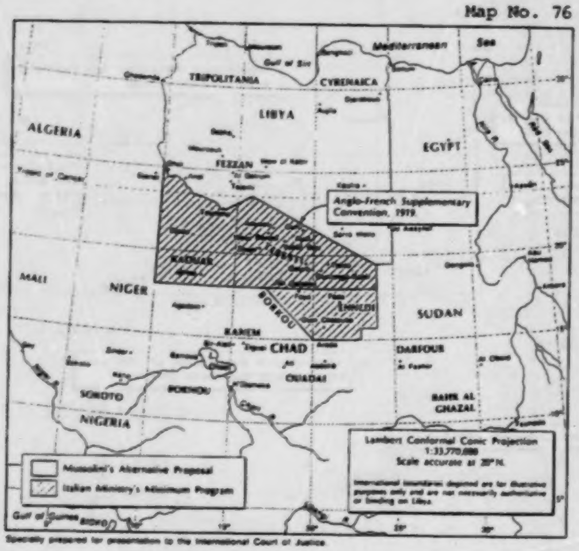

TRIPOLITANIA
CYRENAICA
LIBYA
FEZZAN
EGYPT
Anglo-Egyptian Agreements 1925 & 1926
Tropic of Cancer
Anglo-French Declaration, 1899 (according to the Livre Jaune map)
Territory offered to Italy by France 21 December 1928
1929 Italian Claim
Anglo-French Supplementary Convention, 1919
TIBESTI
FRENCH
OUNIANGA
BORKOU
WEST
ENNEDI
SUDAN
Anglo-French Declaration of 1899 and Supplementary Convention 1919
AFRICA
Anglo-French Convention 1898
OUADAI
DARFOUR
NIGERIA
FRENCH
EQUATORIAL
AFRICA
Lambert Conformal Conic Projection
Scale accurate at 20°N.
1:14,715,000
0
250
500
Kilometers
15°
20°
25°

y prepared for presentation to the International Court of Justice

Source: British War Office Map, 1920

5.265 Mussolini then made an alternative proposal as to the course of the frontier. It is also shown on Maps Nos. 75A and 75B, which illustrates the other related lines established by earlier agreements as well as the caravan routes, which it was a primary objective of Italy to retain on the Libyan side of the boundary. If this proposal is compared to the minimum program formulated by the Italian Ministry of Colonies in 1928 , as is demonstrated by Map No. 76, it can be seen that the entire southern boundary of Mussolini's 1929 proposal was drawn along 18°N latitude and that the southeast salient down to 15°N latitude of the minimum program had been dropped, thus dividing Borkou and Ennedi between Italy and France.

Map No. 76



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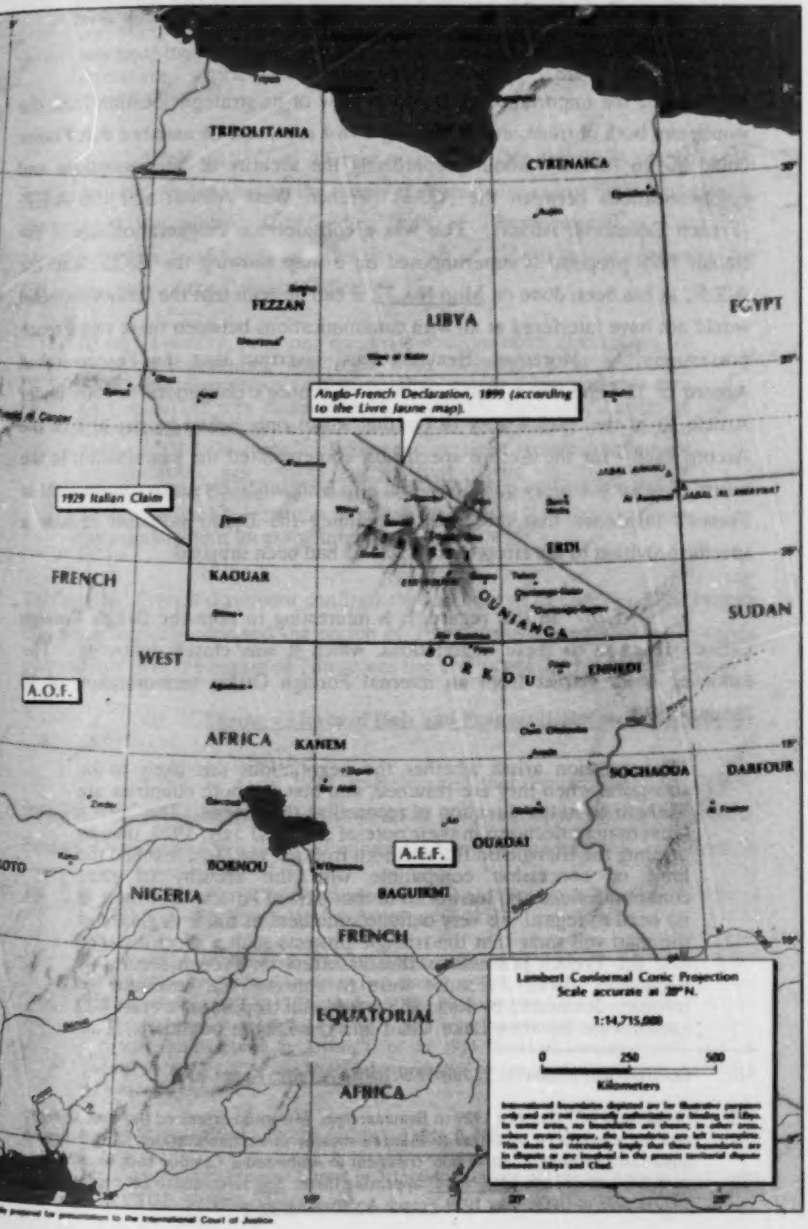
5.266 Ambassador Beaumarchais replied to Mussolini on 22 July 1929. As to the frontier, he pointed out that the French proposal of ceding the oasis of Djado had in fact been proposed earlier by Mussolini himself. He went on to say that the French Government felt it had already satisfied its obligations under Article 13 -

Map No. 77


TRIPOLITANIA
CYRENAICA
FEZZAN
LIBYA
EGYPT
Anglo-French Declaration, 1899 (according to the Livre Jaune map).
1929 Italian Claim
JABAL AL UWAYNAT
ERDI
FRENCH
KAOUAR
OUNIANGA
SUDAN
WEST
BORKOU
ENNEDI
A.O.F.
AFRICA
KANEM
SOCHAOUA
DARFOUR
A.E.F.
OUADAI
BORNOU
NIGERIA
BAGUIRMI
FRENCH
EQUATORIAL
AFRICA
Lambert Conformal Conic Projection
Scale accurate at 20°N.
1:14,715,000
0
250
500
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where sectors appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

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> "... en abandonnant à l'Italie, à l'ouest et au sud de la Tripolitaine, des territoires que ne le cèdent pas en étendue à ceux dont l'Angleterre s'est dessaisie en Afrique[326]."

He stressed the importance of Djado in view of its strategic location from the standpoint both of trade and of policing a vast area; and he asserted that France could go no further without jeopardising the security of its possessions and communications between the A.O.F. (French West Africa) and the A.E.F. (French Equatorial Africa). This was a considerable exaggeration; for if the Italian 1929 proposal is superimposed on a map showing the A.O.F. and the A.E.F., as has been done on Map No. 77, it can be seen that the Italian proposal would not have interfered at all with communications between these two French possessions[327]. Moreover, Beaumarchais' assertion that the Franco-Italian Accord of 12 September 1919 had satisfied France's obligations to Italy under Article 13 of the 1915 Treaty of London is not only belied by the text of the Accord itself - for the Accord specifically contemplated the examination in the future of other boundary questions - but also is shown to be suspect in the light of France's insistence that the treaty containing the Djado proposal include a specific provision to the effect that Article 13 had been satisfied.

5.267 In this regard, it is interesting to note the British Foreign Office's reaction to these negotiations, which it was closely following. The following is an extract from an internal Foreign Office memorandum of 30 January 1930:

> "The question arises whether the negotiations are likely to be successful when they are resumed, and how far both countries are likely to go in the direction of reconciling their views. The French Government declared in their note of the 22nd July, 1929, that, in offering the triangle on the southern frontier, they had reached the limit of concession compatible with the security of their communications and territories in that part of Africa. But there is no need to regard this very definite statement as final. A glance at the map will show that the triangle projects such a short distance into the French possessions that its effect on French security is negligible. Even if France were to concede the maximum of territory demanded by Italy, she would still dispose of a tract 400 kilom. wide between Lake Chad and the Libyan boundary. This

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[326] Beaumarchais-Mussolini, 22 July 1929, Italian Archives Annex, p. 69.

[327] In his reply of 7 October 1929 to Beaumarchais, Mussolini expressed the same thought: that there would be no threat to France's security or communications. This brings to mind Lord Salisbury's "horseshoe" comment to Ambassador Cambon back in 1899. See, para. 5.21, above, and Map No. 43 appearing there. See, reference to note of 7 October 1929 in note of 14 October 1929, French Archives Annex, p. 381.

> would leave her ample elbow-room in which to develop her communications and strengthen her defences. However, France is not likely to concede much more; and if an agreement is to be reached, Italy must submit her official demands to a Procrustean operation which will considerably reduce their present propositions[328]."

5.268 In a Quai d'Orsay note of 14 October 1929 analyzing the Italian proposal and discussing the merits of several alternative French proposals, the thought was advanced of "ceding" part of Tibesti instead of Djado[329]. However it was feared that an offer of a part of Tibesti would encounter the fierce resistance of the Colonial Office:

> "Il est à craindre, pour peu que nous voulions offrir aux Italiens un avantage substantiel, que nous nous heurtions à la résistance vigoureuse des milieux coloniaux. Bien que le Tibesti semble être de population très clairsemée (8 ou 10.000 habitants d'après le Commandant Rotier) et que ses ressources minières dont aucun indice n'a révélé jusqu'ici l'existence seraient vraisemblablement inexploitables, ses trésors cachés font partie de la mystique coloniale. Le Conseil des Ministres a décidé récemment d'occuper en permanence le territoire et le Président de la République prend personnellement un grand intérêt à la question[330]."

This internal French document confirms the fact that as of October 1929 France had not effectively occupied the region of Tibesti; and it suggests that France's claim to title over the region of Tibesti was the product of "la mystique coloniale".

(e) Military Moves of Italy and France; Diplomatic Exchanges

5.269 In early 1930, Italy learned that France had moved into Tibesti. This action followed on the heels of Italy's occupation of Mourzouk in Fezzan[331], and the news that two influential Senoussi leaders had submitted to the Italians. The Italian Ambassador in Paris (Manzoni) notified the Quai d'Orsay on 3 March 1930 that Italian troops had occupied the region of Toummo and that contact with French troops might occur[332]. According to the French note verbale of 5 March 1930 in response, Ambassador Manzoni was concerned that this might happen -

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[328] Memo of 23 October 1930 (in continuation of that of 18 January 1930), Annex I in No. 1, p. 5, FO 371/14406, British Archives Annex, p. 193.

[329] See, note of 14 October 1929, French Archives Annex, p. 381. The French 1928 proposal did in fact involve "ceding" Djado to Italy since it would have been a modification of the Franco-Italian Accord of 12 September 1919. However, the Tibesti concerned territory not covered by a conventional boundary, and hence was the sort of boundary question specifically contemplated by Article 13 of the 1915 Treaty of London. Terms such as "ceding" or "rectifying" would be incorrectly applied to the resolution in Italy's favour of such boundary questions.

[330] Ibid. (Emphasis added.) French Archives Annex, p. 384.

[331] See, Dispatch from French Counsul in Tripoli to Minister of Foreign Affairs, 2 February 1930, French Archives Annex, p. 386.

> "... dans des régions où la frontière franco-italienne à été fixée conventionellement, mais non delimitée, ce qui est le cas à l'ouest de Tummo, ou n'auraient encore, de l'avis du Gouvernement Royal, fait l'objet d'aucune indication bilatérale."

The official French reply included this statement:

> "Le Ministère croit d'ailleurs devoir rappeler à l'Ambassade que, dans l'opinion du Gouvernement Français la ligne qui, à l'est de Tummo, marque la limite des possessions françaises est la ligne définie par l'accord franco-britannique du [9 in text] 8 septembre 1919 portant interprétation de la déclaration franco-britannique du 21 mars 1899, reconnue par l'Italie en vertu de l'accord franco-italien du 1er Novembre 1902[333]."

5.270 Thus, in the 5 March note the French Government asserted that in the 1902 Accord Italy had recognized the southeast line of the 1899 Declaration, as portrayed on the map referred to in 1902 as having been annexed to the Declaration, and, further, that the 1919 "interpretation" of this line was binding on Italy. On this basis, France maintained, and was to continue to do thereafter, that there was a conventional boundary binding on Italy east of Toummo that followed the line established by Great Britain and France in the Convention of 8 September 1919, an agreement made behind Italy's back 17 years after the 1902 Franco-Italian Accord. This was a truly remarkable position to take; and it was all the more so in the light of the internal records of the Quai d'Orsay, such as Ambassador Beaumarchais' dispatch of 20 October 1928, quoted from above at paragraph 5.262, which reveal that the French Government was well aware that such a position was very tenuous indeed.

5.271 Starting in November 1929, French troops from Bilma were stationed in Bardaï in Tibesti. In 1930, Tibesti was detached from the A.O.F. and reattached to the A.E.F.[334]. In the meantime, the flurry of military activity and diplomatic correspondence provided by Italy's move into Fezzan, and the various Italian public statements concerning Italy's claims south of there, continued. In a dispatch of 11 March 1930[335], Ambassador Beaumarchais pointed out to the French Foreign Minister that the Libyan boundary east of the intersection of the Tropic of Cancer and 16°E longitude was subject to three different interpretations: (i) what he called "our interpretation" of the line set out in Article 3 of the 1899 Declaration, as shown on the Livre jaune map; (ii) the Italian interpretation of the line, that is a strict southeast line; and (iii) the line resulting from the 1919 Anglo-French Convention, which pushed the end point of the line north to 19°30'N latitude. Beaumarchais added these other observations:

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[332] See, reference in Telegram of 5 March 1930, French Archives Annex, p. 389.

[333] Note of 5 March 1930, Italian Archives Annex, p. 70.

- That he had been authorized to renounce in favour of Italy the difference between the line as shown on the Livre jaune map and the line resulting from the 1919 Convention, but that he had not yet done so;
- That he had proposed submitting to arbitration the ownership of the territory that lay between the Livre jaune line and the strict Italian interpretation of Article 3 of the 1899 Declaration, but that the Minister of Colonies had formally opposed the suggestion;
- That the current Italian map on a scale of 1:4,000,000 showed certain other differences from the French view;
- That when World War I broke out, France and Italy were on the verge of delimiting these frontiers, but the war had brought this attempt to a halt.

5.272 This dispatch makes it evident that the French Government recognized that a boundary question existed, although the focus at the time was on what direction the southeast line of Article 3 of the 1899 Declaration should take. Italy's view as to the southern boundary east of Toummo was set out on the official map issued by the Italian Ministry of Colonies in 1926. It is this map, on which were placed its medium and minimum programs referred to above (Maps Nos. 70 and 71). The 1926 Italian map portrayed no existing boundary at all east of Toummo.

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[334] See, Map No. 3, referred to in para. 1.33, above.

[335] Beaumarchais-Briand Dispatch, 11 March 1930, French Archives Annex, p. 391.

5.273 There then followed a note verbale from the Italian Embassy in Paris to the French Ministry of Foreign Affairs dated 19 May 1930[336]. This was Italy's answer to France's note verbale of 5 March[337]. Referring to the 1900-1902 Accords, the note observed that France had there recognized that the 1899 Anglo-French Declaration establishes the limits of France's sphere of influence and that, in so far as Tripolitanian and Cyrenaica were concerned, France had no intention to go beyond these limits.

5.274 The Italian note then turned to the 1919 Anglo-French Convention, which had several times been protested by Italy. It said that the 1919 agreement could not be recognized by Italy because it had (i) transformed the legal character of the 1899 Declaration from a zone of influence to a boundary line, and (ii) moved northward to the detriment of Tripolitania and Cyrenaica the limits of the territory which France had undertaken not to exceed in the 1900-1902 Accords. The Italian Embassy informed the French Government that Italy considered territories located north of the southeast line set out in Article 3 of the 1899 Declaration[338] as forming part of Tripolitania and Cyrenaica, but without prejudice to any rights it might have under Article 13 of the 1915 Treaty of London, as to which it had in recent negotiations formulated claims.

5.275 On 25 June 1930, M. Berthelot, on behalf of the Quai d'Orsay, passed on the French Government's response to Italy's note verbale of 19 May[339]. The French reply observed that Italy sought to ignore the 1919 "interpretation" of the 1899 Declaration and had suggested that the "interpretation" conflicted with France's undertaking to Italy of 1902. This was not possible, France argued, since the limits that France undertook not to exceed in the 1900-1902 Accords were the boundaries of Tripolitania as shown on the map annexed in to the 1899 Declaration. The southeast line, on the other hand, which the 1919 Convention "interpreted", and the territory that this line divided, lay entirely outside the Tripolitanian boundary as shown on the map. Therefore, the 1919 Convention could not have transgressed any rights of Italy.

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[336] Italian Note Verbale, 19 May 1930, French Archives Annex, p. 393.

[337] See, para. 5.270, above.

[338] Italy considered this line to be a strict southeast line.

[339] See, Berthelot Note of 25 June 1930, as annexed to telegram of 8 July 1930, Italian Archives Annex, p. 72.

5.276 This was a replay of the argument set out in France's formal response of 7 February 1923 to Italy's protest against the Anglo-French Convention of 8 September 1919, discussed above[340]. As has already been pointed out, this line of argument was entirely different from, and even inconsistent with, the other line of argument of the French Government, as set out in the French *note verbale* of 5 March 1930[341], which relied on the contention that in the 1902 Accord, Italy had recognized the southeast line. In short, in its 25 June 1930 *note*, the French Government asserted that the 1902 Accord did not concern the territory divided by the southeast line; yet in its *note* of 5 March 1930, it said quite the reverse - that in the 1902 Accord Italy had expressly recognized the southeast line.

5.277 Once again, the French position relied on a map said to have been annexed to the 1899 Declaration, which the French Government privately knew to be incorrect. Consequently, the Italian Government started to look for this map. Ambassador Manzoni in Paris was asked to investigate[342]. The Italian Ambassador in London was also asked to join the search. Manzoni was only able to find a copy of the *Livre jaune* containing the 1899 Declaration and selected documents related thereto, including a map. He proceeded to study the documents published in the *Livre jaune* and concluded from his study of the *travaux* that the southeast line referred to in Article 3 of the 1899 Declaration was intended to strike as closely as possible the intersection of 15°N latitude and 21°E longitude[343], and hence to follow a strictly southeast direction. However, no other map than that published in the *Livre jaune* was uncovered.

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[340] *See*, para. 5.210, *et seq*., above.

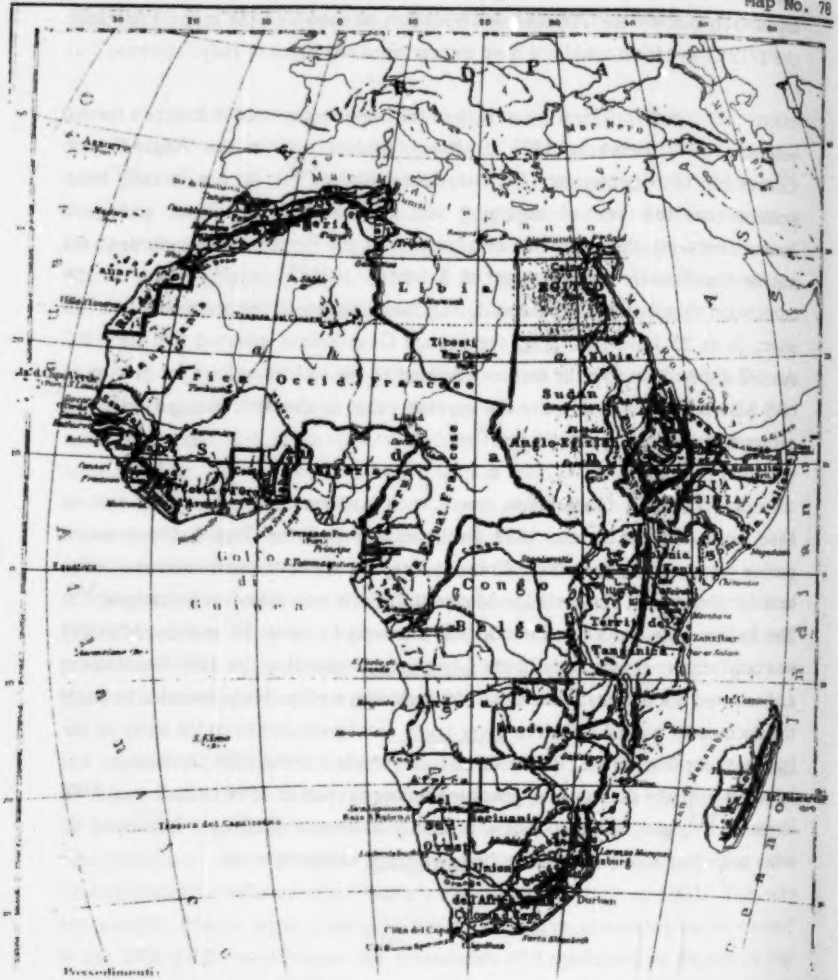
[341] *See*, paras. 5.269-5.270, above.

[342] *See*, Guariglia-Manzoni dispatches, 16 July 1930, *Italian Archives Annex*, p. 79.

[343] His analysis was not unlike that set out at para. 5.38, *et seq*., above.

AFRICA

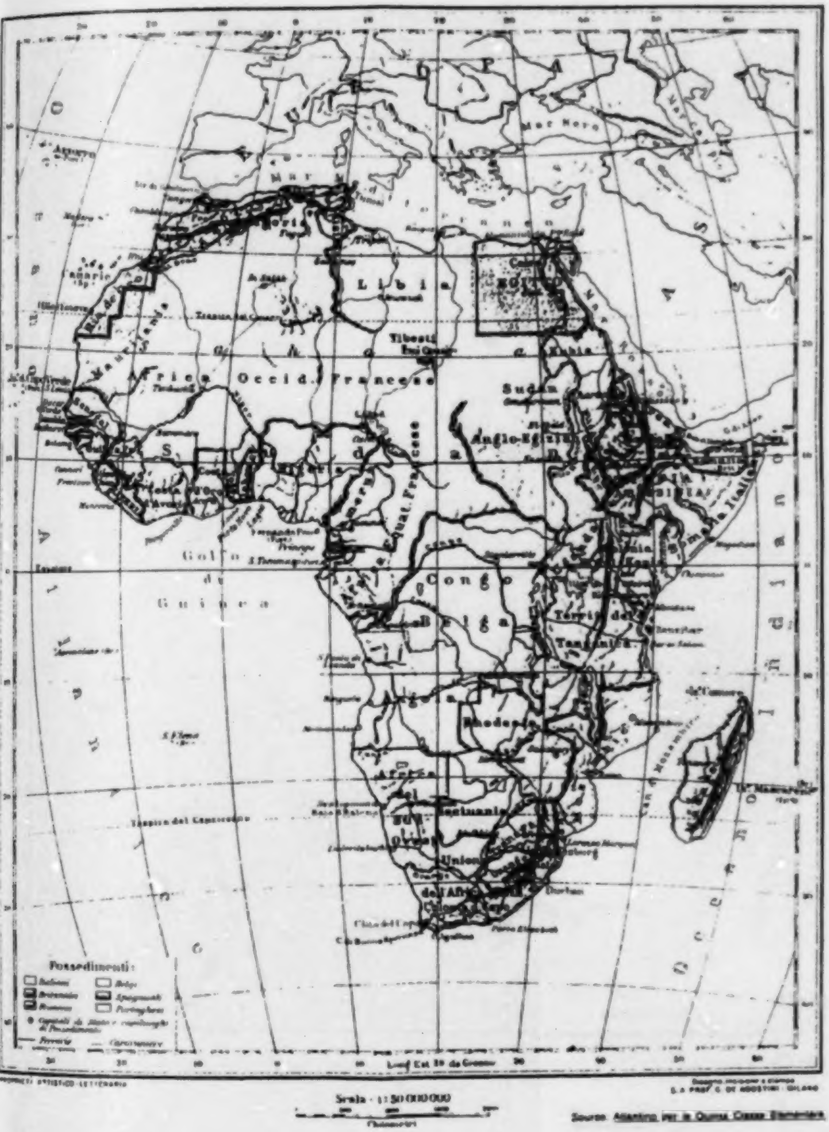
Map No. 78



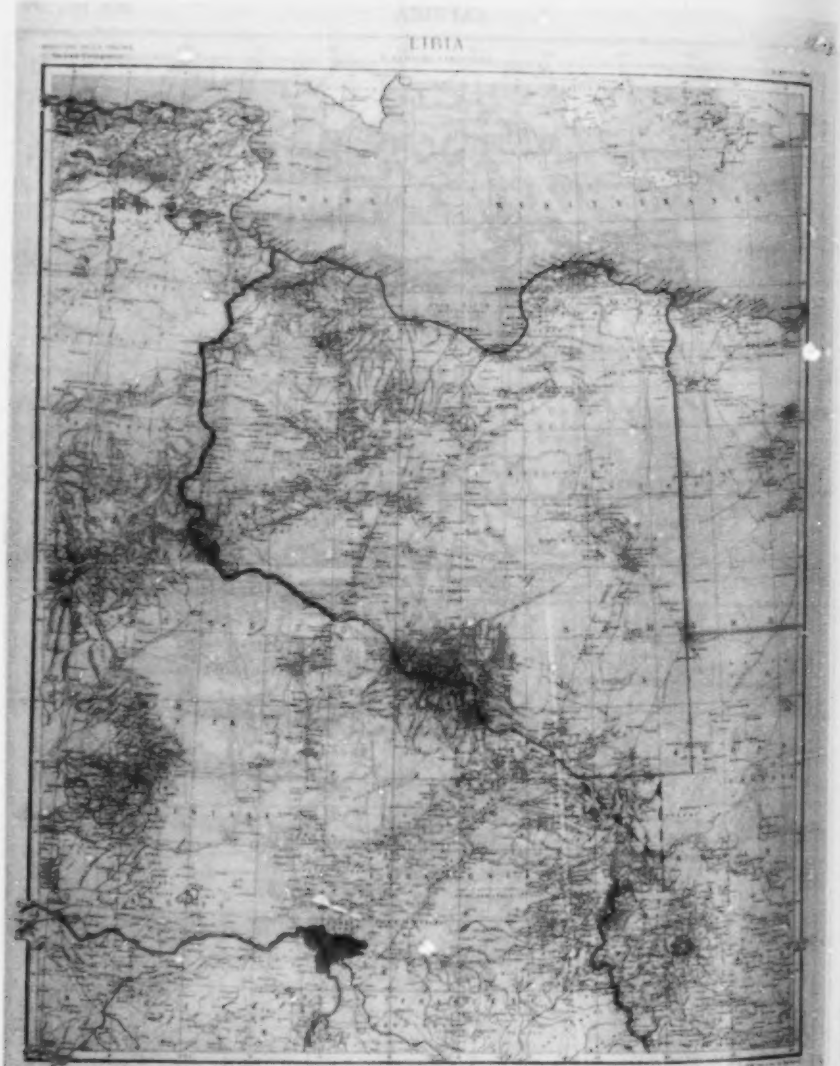
Source: Atlantino per la Quinta Classe Elementare, 1930.

AFRICA

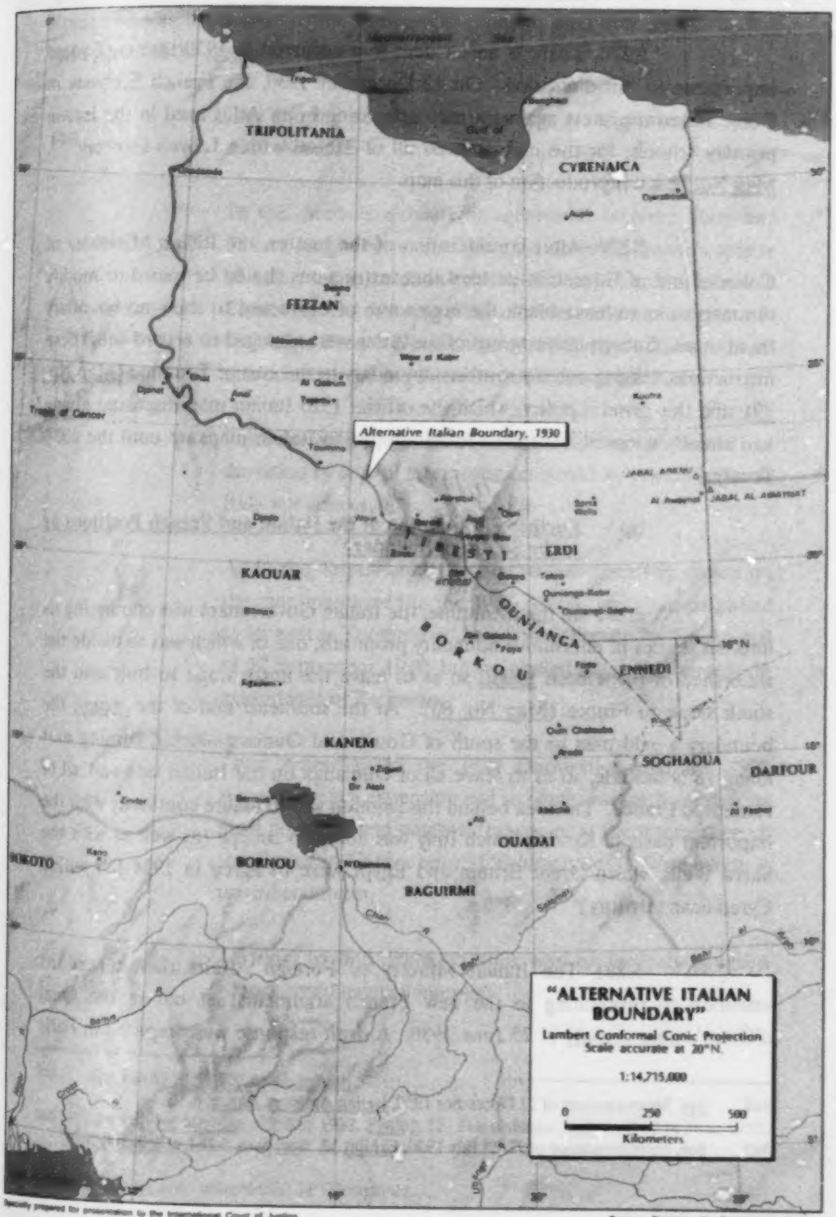
Map No. 79



Source: Atlantino per la Quinta Classe Elementare


LIBIA

Map No. 80



Specially prepared for presentation to the International Court of Justice

Source: Dardano, M., Cartographic Section, Italian Ministry of Colonies, 1930.

(f) Italian School Map Incident

5.278 There is an incident that occurred in 1930 that is of some importance to this discussion. On 12 December 1930, the French Embassy in Rome raised a protest against a map appearing in an Atlas used in the Italian primary schools, for the map showed all of Tibesti within Libyan territory[344]. Map No. 78 is a reproduction of this map.

5.279 After consideration of the matter, the Italian Ministries of Colonies and of Education decided that instructions should be issued to modify the map so as to leave blank the area south of Libya and to show no boundary there at all. Subsequent editions of the Atlas were changed to accord with these instructions, leaving out any southern boundary to the east of Toummo (Map No. 79), and this general policy, which the official 1926 Italian map discussed above had already adopted, continued to be applied to Italian maps up until the 1935 Treaty.

(g) Further Formulation of the Italian and French Positions as to the Southern Boundary

5.280 In the meantime, the Italian Government was continuing its internal studies of alternative boundary proposals, one of which was to divide the watershed of the Tibesti massif so as to leave the north slope to Italy and the south slope to France (Map No. 80). At the southeast end of the massif the boundary would pass to the south of Gouro and Ounianga-Kebir, turning east along 18°N latitude, so as to leave all of Ounianga on the Italian side and all of Ennedi to France. The idea behind this solution was to assure continuity with the important oasis of Koufra, which Italy was about to occupy (as well as with the Sarra Wells, which Great Britain and Egypt were to agree in 1934 fell within Cyrenaican territory)[345].

5.281 The Italian Ministry of Foreign Affairs then turned its attention to responding to the new French arguments set out in the Quai d'Orsay's note verbale of 25 June 1930. A draft response was prepared in Paris by Ambassador Manzoni on 18 May 1932[346]. It underwent some revision in Rome and was dispatched to the French Government on 1 July 1932[347]. The main points of the note were these:

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[344] See, Memorandum of 12 December 1930, Italian Archives Annex, p. 93.

[345] See, correspondence of 22-23 July 1930, Exhibit 52. See, para. 5.284, et seq., below.

- The starting point of the boundary question was the 1900-1902 Accords;
- In the Accords a bilateral agreement between Italy and France had been reached that the limits of France's sphere of influence in relation to Tripolitania - Cyrenaica, which France agreed not to go beyond, were the limits set out in the Anglo-French Declaration of 1899 - that is the southeast line provided for in Article 3 - a strict southeast line;
- Since the geographic direction of the line was southeast, any deviation by way of interpretation would be invalid so far as Italy was concerned;
- As to the Tripolitanian frontier, it was generally shown on the map mentioned in the 1902 Accord and then delimited as far east as Toummo in the bilateral Franco-Italian Accord of 12 September 1919; but no agreed boundary agreement existed east of Toummo;
- Thus, according to the 1899 Declaration and the 1902 Accord, French expansion was to reach, east of Toummo, its most northerly and northeasterly point at the intersection of the Tropic of Cancer with 16°E longitude[348] from where it turned southeast;
- Territory beyond this point, thus, was not territory in which France could have an interest;

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[346] See, the 18 May 1932 draft, Exhibit 52.

[347] Italian Note Verbale of 1 July 1932, Exhibit 52. For revisions, see, draft of 14 June 1932, Exhibit 52.

[348] The note says, erroneously, 14°E longitude.

- Hence, Italy was not able to modify the conclusions set out in its notes of 3 March and 19 June 1930 to the effect that north and northeast of a strict southeast line was territory belonging to Tripolitania - Cyrenaica.

The note went on to say that these conclusions were without prejudice to the negotiations going on under Article 13 to examine other points as contemplated by the Accord of 12 September 1919; and it reaffirmed the 1900-1902 Accords not only as to the limits they placed on French expansion in relation to Tripolitania - Cyrenaica but also in respect to the reference in these Accords to "les communications commerciales établies par les voies caravanières de Tripoli avec les regions visées par la Convention Franco-Anglaise du 21 mars 1899".

5.282 This carefully prepared note made it clear that Italy considered no conventional boundary to exist east of Toummo. Rather than asserting that the 1900-1902 Accords did not concern the sector east of Toummo, however, the note took a different tack: it invoked the Accords to limit France's expansion north and northeast of a strict southeast line. However, it did so without prejudice to the Article 13 discussions in progress. Since the southeast line of the 1899 Declaration limiting France's zone of influence was not a boundary line binding on Italy, the Article 13 negotiations were not restricted by this line. But France could not go beyond the southeast line because it had undertaken in the Accords with Italy not to do so. In addition, France was reminded of the large area covered by the caravan routes, whose protection has been embraced by the 1900-1902 Accords. It will be recalled that Italy's 1929 proposal (portrayed on Maps Nos. 75A and 75B referred to in paragraph 5.263) would have enclosed these routes within Libyan territory south to 18°N latitude. So Italy's reply left a good deal of room in which to manoeuvre during the on-going negotiations.

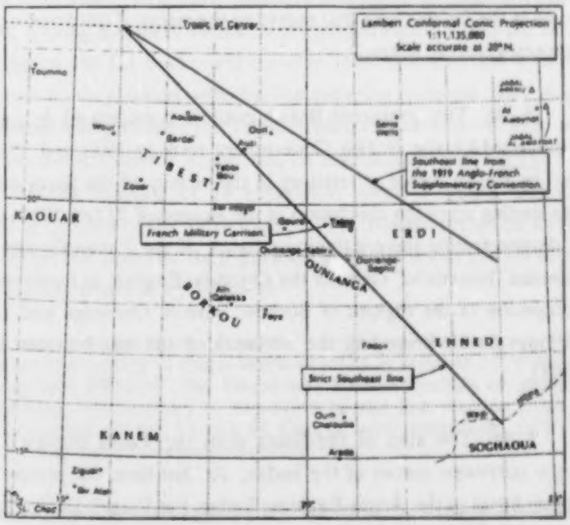
5.283 The Italian note of 16 July 1932 provoked no immediate response from the French Government, and several years passed without incident. Then on 9 June 1934, the Italian Embassy in Paris sent a note verbale to the French Foreign Ministry protesting, inter alia, the establishment of a French military garrison at Tekro. As the map shows, Tekro is north of the 1899 southeast line, which Italy considered to be a strict southeast line, and hence was deemed to be in Cyrenaica (Map No. 81). The French Government replied on 24 August 1934, stating that it had carefully examined Italy's earlier note of 16 July

1932 on which the 1934 protest had been based and found nothing in it to modify the French position as set out in 24 June 1930. It added that:

> "Le Gouvernement de la République considère qu'il fait entièrement honneur à son accord de 1900-1902 avec le Gouvernement Royal en ne dépassant pas, par rapport à la Tripolitaine-Cyrénaique, la limite qu'assigne à l'expansion française la déclaration franco-britannique du 21 mars 1899, valablement interprétée par la Convention franco-britannique du 8 septembre 1919. La ligne ainsi définie, après avoir quitté le Tropique du Cancer en direction du Sud-Est, rencontre le 24° de longitude est de Greenwich à l'intersection de ce méridien avec le 19°30 degré de latitude nord[349]."

Clearly, there was no flexibility at all in the position of the French Government at that time.

Map No. 81



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349 French note of 24 August 1934, as enclosed in a telegram from the Italian Embassy in Paris, 25 August 1934, Italian Archives Annex, p. 112.

SECTION 15. Italo-Anglo-Egyptian Accord of 20 July 1934 Relating to the Libya-Sudan Boundary

5.284 The negotiations leading up to the conclusion of the exchange of notes constituting this Accord provide further evidence of the consistent position of the British Government, as one of the parties to the Anglo-French Declaration of 1899, as "interpreted" by the Anglo-French Convention of 1919, that the line indicated in that Declaration as so "interpreted", was not a *frontier* or *boundary* line but simply a line dividing spheres of influence[350]. As will be demonstrated again, the British view, already enunciated in their response to Ottoman and Italian protests and representations in the period immediately following the conclusion of the 1899 Declaration, and repeated in the British Government's reply to the Italian protest of 18 December 1921 against the terms of the 1919 Anglo-French Convention[351], continued to be that the line indicated in the 1899 Declaration as interpreted by the 1919 Convention was *not* a line that purported to allocate territory as between the parties to these two instruments, but simply operated as an indication of the limits of territories which either party *might* acquire in the future (with due regard to the rights of third parties) without incurring protest from the other.

5.285 This consistent British position is evidenced *de novo* by the relaxed attitude which the British Government took in 1933 and 1934 to the "occupation" by Italian forces of territory in the vicinity of the Sarra wells. The negotiations leading up to the conclusion of the Accord of 20 July 1934 are also of interest as demonstrating the continuing reliance of the Italian Government on the Tripolitanian "hinterland" claim of the Ottoman Empire, as buttressed by the Turkish occupation of the regions of Borkou, Ennedi, Ounianga and Tibesti, in the period immediately preceding the outbreak of the war between Italy and Turkey in 1911.

5.286 The area of the Sarra wells (or "Sarra triangle") formed, until 1934, the northwest corner of the Sudan. At that time, the precise point at which the boundaries of the Anglo-Egyptian Sudan, the French Sudan, Libya and Egypt converged was in dispute. As between Egypt and the Sudan, the boundary had run, since 1899, in an east-west direction along 22°N latitude (*Map No. 82*).

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[350] The Italo-Anglo-Egyptian Accord of 20 July 1934 is attached as *International Accords and Agreements Annex*, No. 24.

[351] *See*, para. 5.202, *et seq*., above.

As between Egypt and Libya, the frontier ran in a north/south direction along 25°E longitude as far as 22°N latitude, this by virtue of the Italian-Egyptian Agreement of 6 December 1925. The "line" dividing the Anglo-Egyptian Sudan from the French Sudan was the line resulting from the 1899 Anglo-French Declaration as interpreted by the Anglo-French Convention of 1919. This left a triangle, bounded to the north by latitude 22° (if the line of 22°N latitude is hypothetically extended westward of 25°E longitude), to the east by longtitude 25°E, and to the south by the line resulting from the 1899 Anglo-French Declaration as interpreted by the Anglo-French Convention of 1919. The triangle, known as the "Sarra triangle" because of the presence within it of the Sarra wells, fell within the British "sphere of influence" as defined in these two instruments.

5.287 In early 1931, Italian troops, seeking to exercise control over those parts of Libya, captured Koufra, and began sending patrols to the south. The question of the ownership of the Sarra triangle thus became active. It had until then been shown on British, Sudanese and Egyptian maps as appertaining to the Sudan, it being assumed, without any legal justification, that the boundary line between Egypt and the Sudan laid down in 1899 extended due westwards along 22°N latitude to its junction with the line resulting from the 1899 Anglo-French Declaration as interpreted by the Anglo-French Convention of 1919. In 1932, the then British Ambassador in Rome had, on instructions, sent a note to the Italian Foreign Ministry warning of an expedition which a Major Bagnold was to undertake in the area of the Sarra triangle. The Italians promised all facilities for the expedition but reserved their position explicitly about the ownership of the Sarra triangle area by stating they were -

> "... unable to consider ... that the territory of the Sudan includes either the locality of Sarra Wells situated at latitude 21°39'40" and longtitude 21°50'36", the Tibesti and Ennedi foothills or, generally speaking, the territory to the north of the line starting from the intersection of the Tropic of Cancer with longtitude 16°E and following a south-easterly direction[352]."

The Italians add that they claimed that territory as belonging to the zone "of Koufra and ... part of the territory of Libya".

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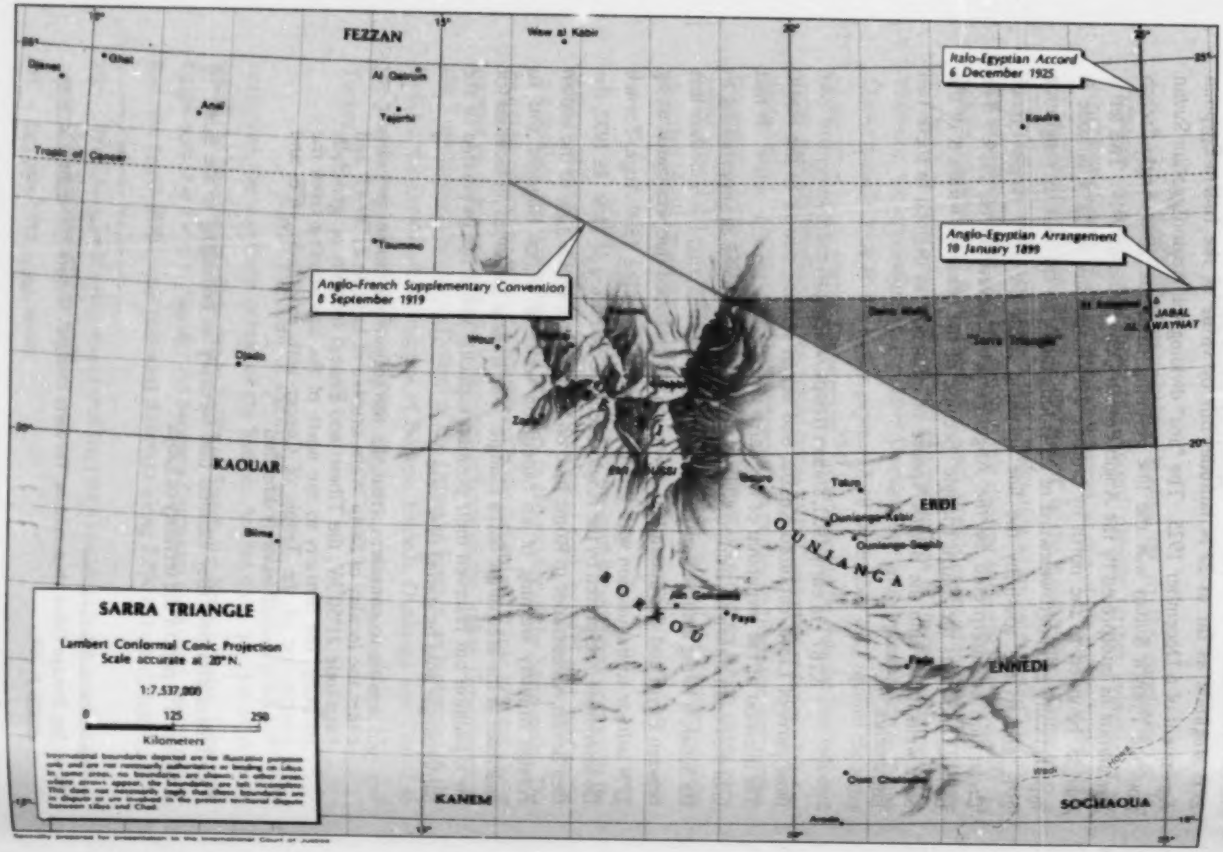
[352] See, Foreign Office Memorandum "The Sarra Triangle", 12 April 1933, British Archives Annex, p. 204.

Map No. 82


FEZZAN
Waw al Kabir
Djanet
Ghat
Al Qatrun
Anai
Tajarhi
Kaufra
Tropic of Cancer
Toummo
Italo-Egyptian Accord
6 December 1925
Anglo-Egyptian Arrangement
10 January 1899
Anglo-French Supplementary Convention
8 September 1919
JABAL
AL AWAYNAT
"Sarra Triangle"
Wour
Djado
Zouar
KAOUAR
Bilma
Talurg
ERDI
Ounianga-Kebir
Ounianga-Serir
OUNIANGA
BORKOU
Faya
ENNEDI
Fada
Oum Chalouba
Wadi Howa
KANEM
SOGHAOUA
Arada
15°
20°
25°
SARRA TRIANGLE
Lambert Conformal Conic Projection
Scale accurate at 20°N.
1:7,537,000
0
125
250
Kilometers

5.288 The Bagnold expedition in late 1932 had found an Italian force at Ain-Doua in the Owenat district. Subsequent air reconnaissances showed that the Italians had established a semi-permanent landing ground there. These developments caused a study of the ownership of the Sarra triangle to be undertaken in the British Foreign Office.

5.289 A detailed memorandum on the Sarra triangle was prepared in the Foreign Office in late 1933 and was enclosed with a letter to the War Office of 16 November 1933 indicating that the question of the ownership of the Sarra triangle was about to be discussed in Rome between British and Italian representatives[353]. After rehearsing the treaty position on the lines indicated above, the memorandum continued:

> "It will be seen from the above that the line fixed in the Anglo-French agreement of 1919 represented the southerly limit of a triangle in which His Majesty's Government might wish to acquire territory or political influence; that the northern side of that triangle was fixed by cartographers in order to tidy up the map[354], and that the eastern side lies somewhere west of longitude 25°. Recognition of Italian sovereignty over the greater part of the triangle would thus involve no cession of territory on the part of His Majesty's Government or the Sudan Government; it would merely mean that His Majesty's Government had decided not to operate the claim over the area which they had staked out as a zone of influence. This is an important consideration in view of possible parliamentary questions in the event of an agreement with Italy being reached[355]".

The memorandum then considered the strengths and weaknesses of the respective Italian and Sudan claims to sovereignty over the Sarra triangle:

> "It was contemplated in 1923 (a) that it was for Italy to prove her title affirmatively to the triangle and (b) that the case of Italy for sovereignty over the triangle was weak. Conditions have, however, changed since then. Italian forces have advanced to Owenat, Ain Doua (at the south-west corner of Owenat) and Sarra Wells and are, in fact, in occupation of these places. The legal position as defined by Mr. Beckett [at that time Second Legal Advisor to the FO] is that where 'A' is in possession of territory and 'B' objects to 'A' being there and claims that the territory is his, it is for 'B' as plaintiff, to prove an affirmative title rather than that of 'A' and not

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[353] FO 371/17035, 16 November 1933, British Archives Annex, p. 205.

[354] This comment bears out the point made in para. 5.287, above, that extension of the line of 22°N latitude to the west of 25°E longitude had no legal basis.

[355] Ibid.

> for 'A' to prove it. Possession is good as against anybody else who cannot show a better title. The present position is that Italy has definitely claimed the territory as Italian, or at any rate the greater part of it, and is in physical possession of it. She will, therefore, not (nor need she) accept the position that it is for her rather than the Sudan to prove affirmatively the right of sovereignty. What sort of an affirmative case for sovereignty can be made out for the Sudan? The answer seems to be no case at all. The résumé above of the note sent to the Italian Ambassador in 1924 [sic: the year was in fact 1923] shows that no case can be founded on the 1899 and 1919 agreements with France. The maps which exist probably carry no weight with Italy; and the Sudan Government cannot prove (i) that they actually administered and occupied the territory before the Italians went there, or (ii) that this territory definitely was part of those Turkish provinces which were allotted by the old Ottoman Empire to the Khedive of Egypt[356]."

The memorandum then suggested a possible line to take with the Italians in the negotiations in Rome; namely, the argument "that the triangle was never occupied or administered by the Turks and that, therefore, the Italians cannot claim it as inheritors of Turkey".

5.290 On 4 December 1933, the British negotiators (Mr. Peterson and Wing-Commander Penderel) submitted a written report on their conversations in Rome with Italian negotiators between 27 and 30 November 1933 on the Sarra triangle[357]. Several points of interest emerge from this report. At the opening session, the British negotiators staked out their initial position:

> "The line which we took was, briefly, that it was not our fault that we could not point to an agreed and recognised frontier west of the tri-junction point between Egypt, Libya and the Sudan, since, until quite recently, we had had no one with whom to agree such a frontier: short of that, and in the absence of any proof in support of the Italian claims, which we understood to be based on those inherited from Turkey, but for a statement of which we had hitherto asked in vain, we had a perfect right to assume that the northern frontier of the Sudan continued along the 22nd parallel west of the tri-junction point. As regards the question how far the Sudan frontier extended westward along the 22nd parallel, we felt that we had acted reasonably and practically in prolonging it on our maps to the point at which it joined the line of influence, which we had agreed with the French in 1899 and again in 1919: we might, it seemed to us, have even prolonged the Sudan frontier to the west by a line drawn from the tri-junction point to the northern point of the Anglo-French line of influence, where the 16th meridian of

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[356] Ibid.

[357] The conversations of 27, 28 and 29 November 1933 referred to are found in Report of 4 December 1933, FO 371/17035, British Archives Annex, p. 224. See, also, the notes taken by the Italians of these discussions, op. cit., pp. 240-260.

> longitude intersected the Tropic of Cancer: we agreed, indeed, that we had ourselves admitted that the Anglo-French line did not in itself constitute a frontier, but marked the limits of zones of influence: nevertheless, we thought it reasonable to maintain that the north-western extremity of that line represented a point which in one way or another we were entitled to join up with the tri-junction point: and our method of effecting this might well have been such as to include an even larger area of the territory now claimed by Libya[358]."

5.291 This tough opening statement provoked a response from the Italian negotiators stressing the extent of Turkish penetration southwards during the early 1900s:

> "At the second meeting, on the 28th November, the Italians opened with a lengthy dissertation upon the extent southwards of the Turkish occupation of Libya, a subject upon which they had touched only lightly at the first meeting. Mentioning particularly Guro and Ain Galaka, they maintained that Turkish occupation had in effect extended south of the 16th parallel. They declared that they possessed in their military archives orders issued by the Turkish High Command in the north of Cyrenaica to the scattered detachments in the south, recalling them on the outbreak of the Italo-Turkish war; these orders showed conclusively that the Turkish forces in the extreme south were regulars and in no way merely Senussi or nomads. They added that there had been a regular Turkish mudir in charge of the administration of Kufra at this time. In a word, and as between the French and the Italians, while the French claim that these Turkish incursions in Tibesti and Borku were of the nature of raids which were quickly dealt with and the raiders expelled by the French themselves, the Italian claim is that these Turkish detachments only returned to the north on the specific instructions of their superiors and for the purpose of resisting the Italian attack on Libya[359]."

In response, the British negotiators "were prepared to concede short-lived Turkish penetration as far as Aïn Galaka and possibly other places", but, while anxious not to interfere in a question which lay between the Italians and the French more than might be absolutely necessary for the purpose of discussing the Sarra triangle, felt that "the Italian claims had been seriously compromised by the

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[358] Ibid.

[359] Ibid. Emphasis added.

Prinetti-Barrère conversations in 1902 and by the declarations of Signor Tittoni in 1919"[360].

5.292 At this point, the British negotiators put forward a proposal on the following lines:

> "(a) The northern frontier of the Sudan should, as from now, be fixed as following: from east to west, the 22nd parallel as far as the 24th meridian.
>
> (b) The western frontier of the Sudan should be left undertermined until the moment when Italy and France have settled their dispute over Borku.
>
> (c) Should Italy establish its title to the region of Borku, the western frontier of the Sudan shall be fixed as following the 24th meridian.
>
> In the interim, Italy and the Sudan would both use the Sarra wells[361]."

5.293 At the third meeting, on 30 November, the Italian negotiators defined their own proposal -

> "... that the Sudan frontier with Libya should start from the point of intersection of the 27th meridian and the 22nd parallel and should follow that meridian south to the 19th parallel, when the line - in order, as they said, and as an act of grace, to leave the Sudan Bir Natrun, of which they understood we were in effective occupation - would turn south-west to joint the French frontier at the 16th parallel[362]."

The British negotiators found this proposal completely unacceptable, and broke off the conversations:

> "We had, we said in conclusion, come to Rome for the purpose of deciding the fate of territory to the west of the 25th meridian to which some doubt might attach; we were quite unable to accept a position in which not only were our claims to any part of such territory to be brushed aside, but a large part of the Anglo-Egyptian

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[360] The British negotiators were clearly well briefed as to the French position and as to the stratagem which had guided the British and French Governments in an attempt to reconcile their opposing views in responding to the Italian protest against the Anglo-French Convention of 8 September 1919.

[361] Ibid., p. 3, as translated from the French, British Archives Annex, p. 226.

[362] Ibid.

> Sudan demanded in addition upon grounds which we could not regard as in any way substantial[363]."

5.294 The French had been warned in advance about the proposed Anglo-Italian conversations on the Sarra triangle[364]. Upon the return of the British negotiators from Rome, the French Embassy in London left a memorandum with the Foreign Office making two points:

> "1. From the French point of view, it would be necessary that the possible Anglo/Italian agreement should not put in issue the interpretation which the Anglo/French Convention of 8 September, 1919, has given to the line defined by the Declaration of 21 March, 1899; neither of the two contracting parties should, without the consent of the other, give up this interpretation towards a third power.
>
> 2. It would equally be necessary that the new arrangement, if it acknowledged Italian rights of sovereignty, occupation or usage over the disputed territory, should refrain from basing these concessions on geographical, economic, political or historical arguments which could contribute to strengthening, directly or indirectly, the claims in certain Italian circles over certain of the French positions in Central Africa[365]."

5.295 Initially, it was thought in the Foreign Office that satisfaction of these two French conclusions would debar the British from ceding the Sarra triangle to Italy without French consent. But the Foreign Office legal advisers thought otherwise. In a minute of 18 December 1933, Mr. Beckett stated that he did not read the French conclusions in this sense. He went on to say:

> "If the French did contend (as I think clearly they do not) that H.M.G. could not cede the Sarra Triangle to Italy without their consent, and if they based this contention on the ground that it was contrary to the 1899 and 1919 Agreements to do so, I think that the French would clearly be wrong. There is not a word in either of these Agreements binding either Power in fact to occupy and establish its sovereignty up to the agreed line, across which they undertake not to go, nor is there a word about recognising rights of

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[363] Ibid.

[364] See. Letter from the French Ministry of Foreign Affairs to the French Ambassador in London, 27 November 1933, British Archives Annex, p. 210.

[365] Memorandum of the French Ambassador, as translated from the French, 16 December 1933, FO 371/17036, British Archives Annex, p. 230.

> other Powers in, or ceding territory to other Powers in the area which each of the two Powers marked out for themselves[366]".

Sir William Malkin, chief legal adviser to the Foreign Office, expressed a similar point of view in his subsequent minute of 19 December 1933[367].

5.296 By early May 1934, the British Government had concluded that another attempt should be made to reach an accommodation with Italy over the Sarra triangle. The British were prepared to renounce any claim to sovereignty over the triangle, having ascertained that the Sudan Government was content not to insist that the triangle was Sudan territory. There were still problems of formulation, however, some of which are referred to in the following extract from Mr. Beckett's minute of 17 May 1934:

> "Paragraph 2 is more difficult, because it purports to be defining the boundary between Italian Libya and the Sudan and ought, therefore, to stop at the point on the Sudan boundary where Italian Libya ceases and French territory begins, but we do not know where this point is, but on the other hand will get into trouble with the French if we draft this paragraph in such a way that suggests that we think Italian Libya goes further south than the French themselves think it does, and I gather that the French themselves do not think it goes further south than the 19°30' parallel; but the Italians will not necessarily admit that Italian Libya stops there. Secondly, I think that we shall raise possibly unnecessary difficulties with the Italians if we refer to the Anglo-French Convention of 1919[368]."

5.297 By the end of May 1934, the Italians had agreed to a resumption of the Anglo-Italian negotiations on the Sarra triangle. On 2 June 1934, Sir E. Drummond (British Ambassador in Rome) was instructed to propose a new basis of settlement: that the "frontier" should follow the 25th meridian southwards from its point of intersection with the 22nd parallel until it reached latitude 19°30'N, at which point the frontier would turn due west to meet and follow the Franco-Sudanese boundary southwards along the 24th meridian[369]. The British were far from confident that the Italians would accept this proposal; accordingly, Sir E. Drummond was instructed to propose submission of the dispute on agreed terms of reference to either the Permanent Court of International Justice or to ad hoc arbitration as a fall-back position.

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[366] Beckett's Minute of 18 December 1933, FO 371/17036, British Archives Annex, p. 233.

[367] Malkin's Minute of 19 December 1933, FO 371/17036, British Archives Annex, p. 234.

[368] Beckett's Minute of 17 May 1934, FO 371/18034, British Archives Annex, p. 262.

[369] See, Simon-Drummond Dispatch, 2 June 1934, FO 371/18035, British Archives Annex, p. 266.

5.298 On 11 and 12 June 1934, Sir E. Drummond had conversations with Signor Suvich (Italian Under-Secretary of State for Foreign Affairs). On 12 June, he left with Signor Suvich the British proposal, which he made quite clear was a final offer:

> "His Majesty's Government to renounce all claim to territory west and north of line following the 25th meridian southwards from its point of intersection with the 22nd parallel until it reaches latitude 19°30', thence due west to meet and follow the Franco-Sudanese boundary southwards along the 24th meridian.
>
> The Italian Government, on their side, to renounce all claim to territories east and south of line defined in previous paragraph.
>
> N.B. - The present conversations are without prejudice to existing claims on the part of either Government[370]."

5.299 Much to the surprise of the Foreign Office, the Italians were prepared to accept this proposal in principle, maintaining only that the step in the line (from the 25th to the 24th meridian) should be at latitude 20° rather than at latitude 19°30' (Map No. 82 referred to at paragraph 5.286 above). This was clearly intended to avoid any recognition by the Italians of the Anglo-French Convention of 1919, as indeed the Italians themselves admitted in further conversations with the First Secretary of the British Embassy in Rome:

> "This solution Signor Guarnaschelli pointed out has the advantage that it compromises neither British nor Italian positions vis-à-vis the French: moreover it would be seen that result of this modification would be accession to His Majesty's Government of a small rectangle of territory beyond that contained within line put forward in their proposal. Signor Guarnaschelli insisted several times on point that modification had been suggested solely in order to avoid any compromising of Italian case (these) vis-à-vis French[371]".

The British Government willingly accepted this slight modification, consequently, the Anglo-Italian Exchange of Notes of 20 July 1934 provides that the line of frontier between Libya and the Sudan is fixed as follows:

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[370] Drummond-Simon Dispatch, 15 June 1934, Annex to Enclosure No. 2 in No. 1, FO 371/18035, British Archives Annex, p. 270.

[371] Drummond's telegram, of 23 June 1934, FO 371/18035, British Archives Annex, p. 271.

> "2. Starting from the point of intersection of 25th meridian east of Greenwich with parallel 22° north, the frontier follows the 25th line of meridian in a southerly direction as far as its intersection with parallel 20° north; from this point it follows parallel 20° north in a westerly direction as far as its intersection with 24th meridian east of Greenwich; from this point it follows 24th meridian east of Greenwich in a southerly direction as far as its junction with the frontier of French possessions.
>
> 3. His Majesty's Government in the United Kingdom renounce all claim on the part of the Sudan to territory to the west and north of the line of the frontier as set out above; the Italian Government, for their part, renounce all claim to territory south and east of the said line of frontier[372]".

5.300 Additional confirmation of the Foreign Office view that the Anglo-Italian Exchange of Notes of 20 July 1934 did not involve any cession of British territory is provided by a negative piece of evidence. According to McNair:

> "There is a practice, now amounting probably to a binding constitutional convention, whereby treaties involving the cession of British territory are submitted for the approval of Parliament, and its approval takes the from of a statute[373].

McNair concedes that the question of the circumstances in which Parliamentary sanction is actually required by law for the cession of British territory is controversial. He finds considerable authority for the view that the Crown may, by a treaty of peace at the end of a war and as a part of the arrangement of terms of peace, cede British territory by virtue of the prerogative and without the sanction of Parliament. He also draws attention to an assertion by a former Attorney-General in 1854 that Parliamentary sanction is not required, as a matter of strict law, for the cession or abandonment of territory which had been acquired by conquest or by cession, and which has never been the subject of legislation by Parliament[374]. He goes on to mention a number of instances of the cession of

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[372] Drummond-Mussolini, 20 July 1934, Enclosure 1 in No. 1 of Drummond-Simon Dispatch of 21 July 1934, FO 371/18035, British Archives Annex, p. 272.

[373] McNair: Law of Treaties, Oxford, Clarendon Press, 1961, p. 94. (A copy of this page is attached as Exhibit 52.)

[374] This was a statement by Sir A. Cockburn, in defending in the House of Commons on 9 May 1854 the abandonment by the Crown of sovereignty over the Orange River Territory without the approval of Parliament. Sir A. Cockburn drew a distinction between territory acquired by occupation and territory acquired by conquest, going on to state:

> "The legal proposition of the power of the Crown therefore rested upon this - that what the Crown had acquired by cession or conquest, and over which it had

erritory forming part of the Crown's former possessions in India (most of them eing cessions of territory to Indian native States and not to foreign Powers) ithout Parliamentary sanction. Having shown that the practice in this respect up ntil the late 19th Century was far from being uniform and admitted of certain mited exceptions, McNair goes on to say:

> "But, at any rate from 1890 onwards, there are several precedents of treaties of cession receiving Parliamentary sanction in the form of a statute. These are the Anglo-German Agreement Act, 1890, sanctioning the cession to Germany of Heligoland; the Anglo-French Convention Act, 1904, where the treaty for the cession of certain British territory to France was made "subject to the approval of their respective Parliaments"; the Anglo-Italian Treaty (East African Territories) Act, 1925, which gave approval to a treaty involving, as a consequence of the rectification of a frontier, a cession of British-protected territory; the Straits Settlements and Jahore Territorial Waters (Agreement) Act, 1928; the Dindings Agreements (Approval) Act, 1934; and the Anglo-Venezuelan (Island of Patos) Act, 1942, approving the Treaty of Cession by Great Britain[375]."

5.301 Now, one would have expected that, if the Anglo-Italian xchange of Notes of 20 July 1934 had been thought to involve a cession of itish territory (in right of the Anglo-Egyptian Sudan) to Italy, it would have en submitted for Parliamentary approval in the United Kingdom in the form of statute. However, it was not so submitted. This negative evidence is all the ore compelling in the light of the statute that had been adopted as recently as 25 to approve the Treaty of 15 July 1924, between the United Kingdom and ly regulating certain questions concerning the boundaries of their respective rritories in East Africa. Accordingly, the absence of any British statute to prove the Anglo-Italian Accord of 20 July 1934 represents further convincing idence that the British Government did not at the time view the Accord as volving a cession or abandonment of territory over which the United Kingdom, right of the Anglo-Egyptian Sudan, exercised sovereignty. That view had of urse already been foreshadowed in the detailed memorandum on the Sarra angle prepared by the Foreign Office in late 1933[376]. The significance of this

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absolute sovereignty, the Crown could deal with without the intervention or the co-operation of Parliament."

Ibid., pp. 95-96. (A copy of these pages is attached as Exhibit 53.)

McNair, op. cit., p. 96. (A copy of this page is attached as Exhibit 53.)

See, para. 5.289, et seq., above.

is, of course, that it reveals that the British Government took a formal legal position that the 1899 Anglo-French Declaration and the 1919 Anglo-French Convention had not established a conventional boundary, for had they done so, the agreement with Italy over the Sarra triangle would have constituted a "cession" of British territory requiring Parliamentary approval.

5.302 Two other points of interest emerge from this brief account of the 1933-34 Anglo-Italian negotiations on the Sarra triangle:

- In negotiating an agreement for the renunciation of Sudanese claims to the Sarra triangle with the Italian representatives, the British representatives were careful to take into account the two French "conclusions" presented to the Foreign Office in December 1933[377], so as not to precipitate an Anglo-French dispute over the manner in which Britain would in effect "transfer" to Italy ownership of the Sarra triangle (although, in British eyes, it was not seen as a transfer of territory to Italy but rather as a simple renunciation of Sudanese claims to the territory);

- The British representatives were equally careful to take Italian susceptibilities and sensitivities into account by:
  - not fixing the southern terminal point of the Libya-Sudan frontier other than by use of the vague and unspecific formula "... as far as its junction with the frontier of French possessions"; and
  - not referring to the Anglo-French Convention of 1919 in the description of the Libya-Sudan frontier.

SECTION 16. The Final Phase of the Franco-Italian Negotiations Relating to the Southern Boundary of Libya (1934-1935)

5.303 After a short pause, the Franco-Italian negotiations were resumed in the spring of 1934 with vigour, owing largely to the return of Pierre Laval to the French Foreign Ministry at the beginning of October 1934. Like his mmediate predecessor, Barthou, Laval had for a long time been convinced of the eed for a clear rapprochement between France and Italy, and he immediately ressed for the rapid conclusion of an agreement that would allow the entirety of he existing Franco-Italian dispute to be closed, including the "African" dispute. The autumn of 1934 witnessed intense diplomatic activity between the two ountries, the principal protagonists being Ambassador Chambrun, on the French ide, and, the Under-Secretary of State, Suvich, on the Italian side. However, both Mussolini and Laval intervened personally in the discussions, especially in the inal phase, during which there was even a meeting between the two of them with either witnesses nor interpreters[378]. That meeting took place on 6 January 935, the eve of the solemn signature of the relevant instruments[379].

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[377] See, para. 5.294, above.

5.304 It should be remembered that the Italian Fascist authorities lso wished at that time to forge closer ties with France going far beyond the mere ettlement of the colonial disputes between the two States. It was therefore not a uestion of simply disposing of the long outstanding matter of the "fair ompensation" due to Italy by France by virtue of Article 13 of the Treaty of ondon of 1915; it was an attempt to construct at the same time a privileged elationship between Paris and Rome designed (from the Italian point of view) to nake France more independent of British influence and (from the French point f view) to prolong and stabilise the cooling off of the relationship between Italy nd Germany, which at that time was in a very critical state as a result, in articular, of the current German policy with respect to Austria and the ssassination of Chancellor Dollfuss by a group of Hitler's sympathisers on 25 July 934.

5.305 Among Mussolini's main concerns at the end of 1934 was e desire to "have his hands free" for an attack on Ethiopia, which the Italians ere actively preparing for. In order to obtain from Laval an assurance of rance's absence of any interest with respect to Ethiopia (which was to be the ubject of a secret exchange of letters between the two men, also on 7 January 935), Italy was prepared to sacrifice to a great extent its colonial aspirations and laims in favour of France with respect to both "compensation" in Libya and the omalia and the Tunisian matters. In fact, Italy was prepared to accept very

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[78] Miège J. L.: L'Impérialisme Colonial Italien de 1870 à nos jours, (Regards sur l'Histoire), Paris, Société d'Edition d'Enseignement Supérieur, 1968.

[79] See, Ladreit de Lacharrière, J.: "Les circonstances et les formes des Accords de Rome", L'Afrique française, 1935, p. 7, et seq., for an excellent account of this episode.

modest results in respect to the boundary question and these other matters if this would allow it, as Ambassador Chambrun had predicted with a great deal of finesse, to -

> "... sauver la face en Libye en obtenant par ailleurs de nous des facilités pour la réalisation d'une politique plus active en Abyssinie[380]".

5.306 It should be borne in mind that, besides the general motives that have just been mentioned there was a specific reason why Italy was receptive to a solution for Libya that was very conservative when compared with the extent of the earlier claims and the juridical titles upon which those claims had been based. In 1930, General Badoglio, who at the time was Governor of Libya, had set out his views with respect to the southern boundary of Libya[381]. In his letter - which made a deep impression on Mussolini - Badoglio pointed out that the areas claimed by Italy to the south of Toummo were to a large extent desert areas and, in his view, of minimal economic interest; and he emphasized the enormous sums that would have to be invested in order effectively to administer and control these vast expanses of land often overrun by rezzous[382] and situated hundreds and even thousands of kilometres from the important centres of northern Libya. He therefore invited the Italian Government to seek territorial advantages "in other more profitable directions" and put all the authority that he enjoyed in Libya (because of the vigorous and successful campaigns conducted under his command that had led to the bloody repression of the native rebellion and to the "pacification" of Libya) behind the following conclusion:

> "We have had enough in Tripolitania of hundreds of kilometres of scarcely productive desert territory to want any more."

5.307 These remarks were later echoed by Mussolini, who was to seize various opportunities to declare that he did not wish to be a "collector of deserts[383]". What Mussolini meant was that the "arpents de sable"[384] of southern Libya could in no way satisfy the needs for what was known, in fascist terms, as Lebensraum for Italy. But just as the French had, the Italians ignored the peoples of the region, as if they were desert animals whose welfare was of no consequence.

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[380] Telegram of 27 September 1934 to the Foreign Ministry, French Archives Annex, p. 399.

[381] Report by Badoglio De Bono (Colonial Minister), transmitted by De Bono to Mussolini on 2 October 1930, Italian Archives Annex, p. 84.

[382] Raids by nomad desert tribes.

5.308 With respect to the matter of the "fair compensation" still due from France to Italy under Article 13 of the 1915 Treaty of London, the true starting point of the final phase of the negotiations that were to culminate in the Treaty of 1935 was marked by an intensive series of meetings between Suvich and Chambrun in September 1934. At the outset, Italy again asserted its claim put forward by Mussolini in 1929 (as far south as 18°N latitude)[385], but quickly agreed to return to less ambitious proposals, including that relating to the "Djado triangle", which the French had offered in 1928. It was implied that the Italian claims might subsequently be reduced even more on condition that Italy obtained satisfaction elsewhere, principally by means of the surrender of the French Somali Coast, excluding Djibouti[386]. This request was unacceptable to the French, despite the fact that they at first showed a certain degree of willingness to discuss it.

5.309 From the various reports of these meetings it is clear that after the meeting of 24 September 1934, the French negotiator began skillfully to play what was to be the winning card: Ethiopia. The Suvich Report describes the appearance of this factor, which was to prove the key to the subsequent negotiations, in these words:

> "He [Ambassador Chambrun] is still holding out to see if another solution can be found; he thinks, for example, that Italy might be interested in a French withdrawal from Abyssinia, thus favouring Italian expansion in that country."

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[383] See, Laval's speech to the Chambre des députés, 2nd session of 28 December 1935, J.O.R.F., 29 December 1935, p. 2865.

[384] Lanne, op. cit., p. 107. (A copy of this page is attached as Exhibit 45.)

[385] See, para. 5.264, et seq., above.

[386] Notes prepared for the Under-Secretary of State by the Italian Foreign Ministry on 10, 12, 17, and 21 September 1934; Suvich Report of 24 September 1934, Italian Archives Annex, pp. 113-146, p. 152. Chambrun Telegram of 27 September 1934, French Archives Annex, p. 150.

5.310 An undated memorandum of the same period, prepared by the Foreign Ministry for the Italian negotiator, clearly shows that the enticement of Ethiopia appeared irresistible to the Italian authorities, who concentrated their efforts upon obtaining a secret document with satisfactory contents:

> "The French counter-proposals mention Ethiopia for the first time. France appears to be telling us that it is limiting its interests in Abyssinia to those of an economic nature and even these to a stretch along the railway and to those parts which are of interest to the railway concerned (France has requested the greatest secrecy of this part of the negotiations ...). This part of the French counter-proposals needs to be detailed and clarified. [387]".

5.311 It is in this context that one should read the demands formulated unofficially in writing a few days later by Suvich, at the invitation of Chambrun, who wanted to obtain a text that could be examined as a whole by his Government, but who also desired to place Italy in the position of making the demands and, thus, to negotiate on the basis of the Italian demands and not of the French offers. After studying the matter (as mentioned in various notes prepared by the competent departments of the Foreign Ministry, and in particular the note signed by Buti on 26 September), Suvich presented a document on 28 September 1934 concerning the "fair compensation", in which the Libyan factor (which in the light of other Fascist demands, as has been seen, was felt to be the least important) was very clearly sacrificed in the hope of gaining satisfaction elsewhere. The text of the Italian demands was as follows:

> "1° Tunisie - Prorogation pendant 10 années des conventions de 1896 appliquées dans un esprit bienveillant.
>
> 2° Compensation coloniales - L'Italie qui avait proposé en 1928 la cession d'un territoire au Sud de la Lybie compris entre les 11ème et le 24ème méridien E.Gr. et le 18ème parallèle nord, ayant rencontré des oppositions propose maintenant:
>
> a) au Sud de la Lybie fixation de la frontière qui éliminerait le saillant à l'est de Tumno et rencontrerait une ligne médiane entre la ligne de la convention franco-britannique de 1919 et la ligne du sud-est dite "mathématique" de façon à laisser à la Lybie des localités et des points d'eau en vue de faciliter notamment la surveillance de la frontière.

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[387] See, Buti-Suvich undated note, Italian Archives Annex, p. 150.

> b) Cession de la Côte française des Somalis à l'exception de Cibuti et d'un territoire environnant la ville.[388]"

5.312 Faced with this proposal, all the subsequent negotiations inevitably concentrated on the Tunisian and Somali questions, given that Italy's conservative demand concerning the southern boundary of Libya immediately appeared entirely acceptable to the French negotiators, despite the resistance of those with a colonial background infected by "la mystique coloniale[389]". Indeed, now that Italy had assumed the role of the party making the demands, French negotiators had the skill to make their acceptance of the Italian proposal concerning Libya appear to be a victory for Italy and concentrated their efforts on the other two matters by playing to the hilt the "Carte Abyssinie", which was the expression used in a note for the French Minister dated 1 October 1934[390]. That note contained the following passage concerning the tactics to be adopted thereafter:

> "On suggère la tactique suivante:
>
> Accepter la conversation pour une rectification des frontières méridionales de la Libye à l'est de Toummo, étant entendu que l'Italie reconnait n'avoir plus aucune revendication à formuler au titre de l'art. 13 du Pacte de Londres.
>
> N'accepter en aucun cas la prolongation des Conventions de '96.
>
> Jouer la carte Abyssinie pour obtenir levée de l'hypothèque italienne sur la Tunisie, c'est-à-dire ne faire aucune concession territoriale ni politique en Abyssinie ou dans la Côte des Somalis si nous sommes obligés de maintenir en Tunisie le statu quo."

5.313 The Italian negotiators now found themselves in a very uneasy position: the French had accepted their very unambitious demand concerning Libya, and were refusing to compensate for this deliberate sacrifice by any relinquishment in the area where Italy had its ambitions: French Somalia. The situation was described as follows in an Italian document of that period:,

> "We must remeber that the reason why in our proposals we have all but dropped our claims for compensation to the south of Libya is that we have sought - as the French have suggested - to centre these

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[388] Note by Suvich on a conversation with Ambassador Chambrun of 28 September 1934, Italian Archives Annex, p. 160.

[389] See. para. 5.268, above.

[390] Note for the Minister, 1 October 1934, French Archives Annex, p. 400.

> compensations on East Africa. If, now, France fails to accept our demands in East Africa, their acceptance of our proposals concerning the southern frontiers of Libya has a particularly ironic flavour[391]."

5.314 However, despite the "particularly ironic taste" of the situation, Italy was in the final analysis prepared to accept the dual sacrifice: the question of having its "hands free" in Ethiopia was quite clearly regarded as having a quite special importance at the top of the hierarchy!

5.315 Indeed, the "Abyssinian card" subsequently proved to be even more profitable for France over and above the Libyan concessions: it led Italy, first, to abandon its request concerning the Somali Coast and to content itself with a modest territorial modification of some 800 square kilometres to the advantage of Eritrea; and, second, to accept a complex settlement, in France's favour, of the Tunisian question. In exchange for the many significant sacrifices agreed to by Italy as compared with its initial demands, France undertook to give it the assurances that it wanted so much - the absence of any French interest in Ethiopia.

5.316 There is a well-known controversy among historians, which is yet to be settled, as to whether these assurances were contained only in the secret exchange of letters mentioned above, or whether other "verbal" assurances were obtained by Mussolini at the meeting with Laval at which there were no witnesses (as the former was to claim subsequently, but which was denied by the latter until his trial after the war which led to his execution). Whatever the answer may be, Ambassador Chambrun's prediction was completely borne out, as he himself had noted in the meantime[392]. In a cable of 1 January 1935, Chambrun reported to Laval, with respect to the "formule de désintéressement en Ethiopie", the following:

> "C'est là, ainsi que votre Excellence le prévoyait en me remettant mes instructions et comme je n'ai cessé de le constater au cours de mes entretiens, le point fondamental de la négociation. M. Mussolini me l'a d'ailleurs dit dans les termes les plus nets.[393]"

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[391] Undated note from Buti to Suvich, Italian Archives Annex, p. 150.

[392] See, para. 5.305, above.

[393] Telegram from Chambrun to Laval of 1 January 1935, French Archives Annex, p. 416.

5.317 Of course, Italy also agreed to add to the "package" the famous "release" to be given to France concerning the fulfillment of the obligations arising out of Article 13 of the 1915 Treaty of London.

5.318 As has been mentioned, France's agreement in principle to Italy's demand, as presented by Suvich on 28 September 1934, had provisionally settled the question of the Libyan boundaries, subject to the determination of a precise formulation acceptable to both parties and, of course, to an agreement to be reached upon all the questions under discussion. After various exchanges, on 28 December 1934, France proposed a draft "African Treaty" whose Article 2 read as follows:

> "La frontière séparant la Libye de l'Afrique occidentale française et de l'Afrique Équatoriale Française à l'est de Tummo, point terminal de la ligne fixée par l'accord de Paris du 12 septembre 1919, sera déterminée ainsi qu'il suit:
>
> Une ligne directe partant de Tummo et rejoignant L'EHI DOMAR DOBA;
>
> De L'EHI DOMAR DOBA, une ligne droite rejoignant l'extrémité Nord-Est de L'EHI DOGO LOGA;
>
> De L'EHI DOGO LOGA, une ligne droite rejoignant L'ENNERI TURKOU en un point situé en aval du confluent de celui-ci avec L'ENNERI GUESSO, de telle sorte que le tronçon DOGO LOGA-ENNERI TURKOU de la piste caravanière du Fezzan vers Bardai reste en territoire français;
>
> De ce point, une ligne droite rejoignant le confluent de L'ENNERI BARDAGUE avec L'ENNERI MOMOGOI ou OFOUNI;
>
> De ce confluent, la ligne des hauteurs séparant L'ENNERI BARDAGUE de L'ENNERI MOMOGOI ou OFOUNI, puis la ligne des crêtes jusqu'à L'EHI MADOU, de telle sorte que les affluents de droite de L'ENNERI BARDAGUE-ZOUMERI, notamment les ENNERI ODRI TINAA, OUADAME, ARAYE, MECHEUR, TIRENNO, AGUESKE, KAYAGA, ABECHE, restent en territoire français;
>
> De L'EHI MADOU une ligne droite rejoignant le confluent de L'ENNERI YEBIGUE avec L'ENNERI EDRI SOU, et laissant en territoire français la piste YOUNTIOU-TOROTORUM-KILENEGUE-YEBBI SOUMA;
>
> De ce point la ligne des hauteurs les plus rapprochées de la rive gauche de L'EDRI SOU, puis la ligne des crêtes du TARSO AOZI jusqu'au point géodésique AOZI;

> De ce point, une ligne droite rejoignant l'intersection du 24ème degré de longitude est Greenwich et du 18ème degré 45' de latitude nord.
>
> Ce tracé est indiqué sur la carte No. 1 jointe au présent traité.[394]"

5.319 Mussolini immediately demanded a marginal change, as referred to in Ambassador Chambrun's cable of 1 January 1935. For Mussolini, it was important that the course of the line (which in general was acceptable to Italy) should include on the Italian side a few more inhabited points. Chambrun commented:

> "Il semble qu'une très légère concession sur ce point, marquant notre bonne volonté, suffirait."

5.320 Indeed, on 2 January 1935, France agreed to replace the 6th and 7th paragraphs of the above text by two new paragraphs reading as follows[395]:

> "De l'Ehi Madou, une ligne droite rejoignant Yebigue, à 10 kilomètres en amont de Yebbi-Souma;
>
> De ce point, une ligne droite rejoignant le point géodésique d'Aozi."

The line thus agreed is portrayed on Map No. 83, a reproduction of a map appearing in a thesis concerning the 1935 Treaty[396]. The data on this map has also been put on Base Map D, which shows the topography of the Tibesti *massif*.

5.321 The text of Article 2 was not subsequently modified, despite a very late attempt initiated on 5 January by the Italian negotiators (in the presence of Mussolini and Laval), who were aware of the scale of the sacrifice represented by the wording of Article 2 as compared with the claims that had been made for so many years by Italian diplomats. No doubt they were concerned over the criticisms such a timid attitude was certain to arouse. A detailed report of the meetings between Mussolini and Laval of 5 and 6 January was drawn up by Chambrun. With respect to the last-minute discussions, that report contains the following account:

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[394] Draft "African Treaty", 28 December 1934, French Archives Annex, p. 409.

[395] Telegram from Laval to Chambrun, 2 January 1935, French Archives Annex, p. 420.

[396] Goiffou, P.: Les clauses Coloniales dans les Accords Franco-Italiens du 7 janvier 1935, Thèse pour le Doctorat en Droit, Université de Lyon, 1936, p. 140. (Pursuant to Article 50, paragraph 2 of the Rules of Court, a copy of this thesis has been deposited with the Registrar.)

> "Aux objections particulièrement vives formulées par M. Suvich et qui portaient sur l'ensemble de dispositions dont beaucoup cependant nous paraissaient acquises, M. Laval a répondu de la manière la plus directe et la plus décisive ...
>
> Tout en faisant ressortir que la valeur économique des territoires compris dans la rectification de la frontière libyenne était pratiquement nulle, ... M. Mussolini s'est abstenu de prendre part à la discussion assez âpre qui a suivi entre M. Laval et M. Suvich ... Les termes dans lesquels M. Laval a parlé du désistement économique de la France dans les régions de l'Ethiopie ... ont fait visiblement impression sur M. Mussolini et ont efficacement préparé l'entente qui a pu s'établir dans la soirée ...[397]."

5.322 Another account of the same episode, supplying certain additional details, is contained in a French report of 24 January on the Rome Accords. This document affords an even better understanding of the fact that there had been a real risk that signature of the Rome Accords might have been jeopardised by the Libyan aspect that the Italians tried, without success, to reopen. Indeed, it is very clear that the Italians had become aware - but far too late - just how excessive the sacrifice of their interests relating to Libya had been. The relevant passage of that document reads as follows:

> "(L)es négociateurs italiens ont donc insisté très vivement pour obtenir l'amélioration du tracé par la cession d'Afafi, point d'eau situé au sud-est de Toummo, de Bardaï et de Tekro. La délégation a opposé un refus catégorique à ces demandes ... Mais il a fallu l'intervention personnelle du Ministre [Laval] auprès de M. Mussolini pour faire échec sur ce point aux revendications italiennes et il n'est pas douteux que les milieux coloniaux de la Péninsule conserveront de ce résultat une déception durable[398]."

5.323 With the knowledge provided by the above account, it is possible to see just how fundamental the role played by the "Abyssinian card" was from the beginning until the end of the final phase of the negotiations. In order to have its "hands free" in Ethiopia, Italy exchanged what it had always put forward as its indisputable territorial rights over southern Libya for an undertaking by France to close its eyes to the imminent attack against a third country. Putting it bluntly, the Rome Accords of 1935 were a true pactum sceleris.

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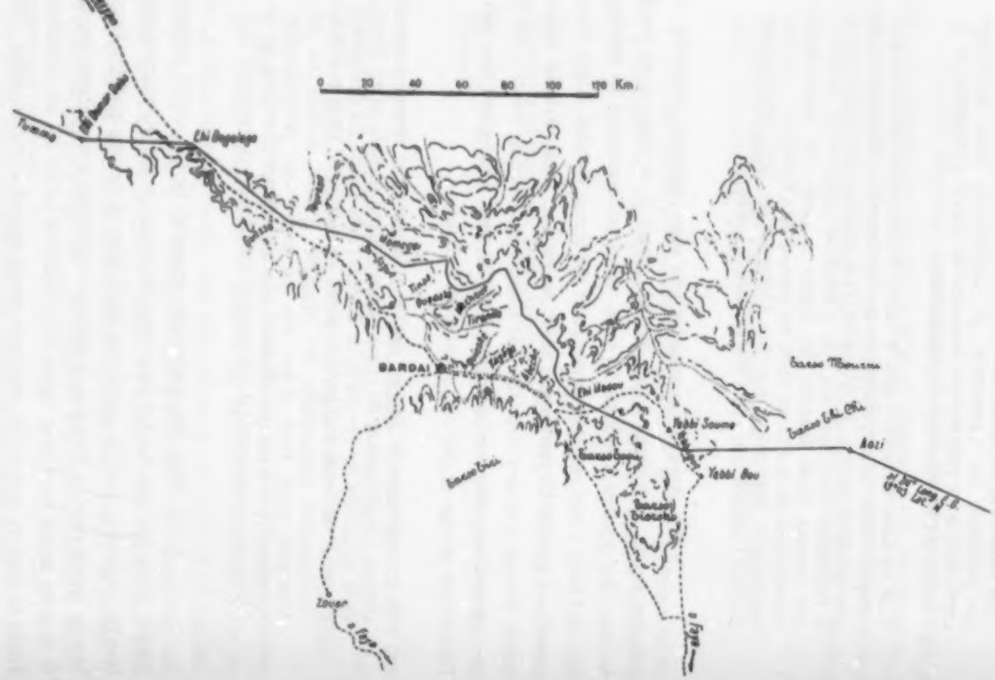
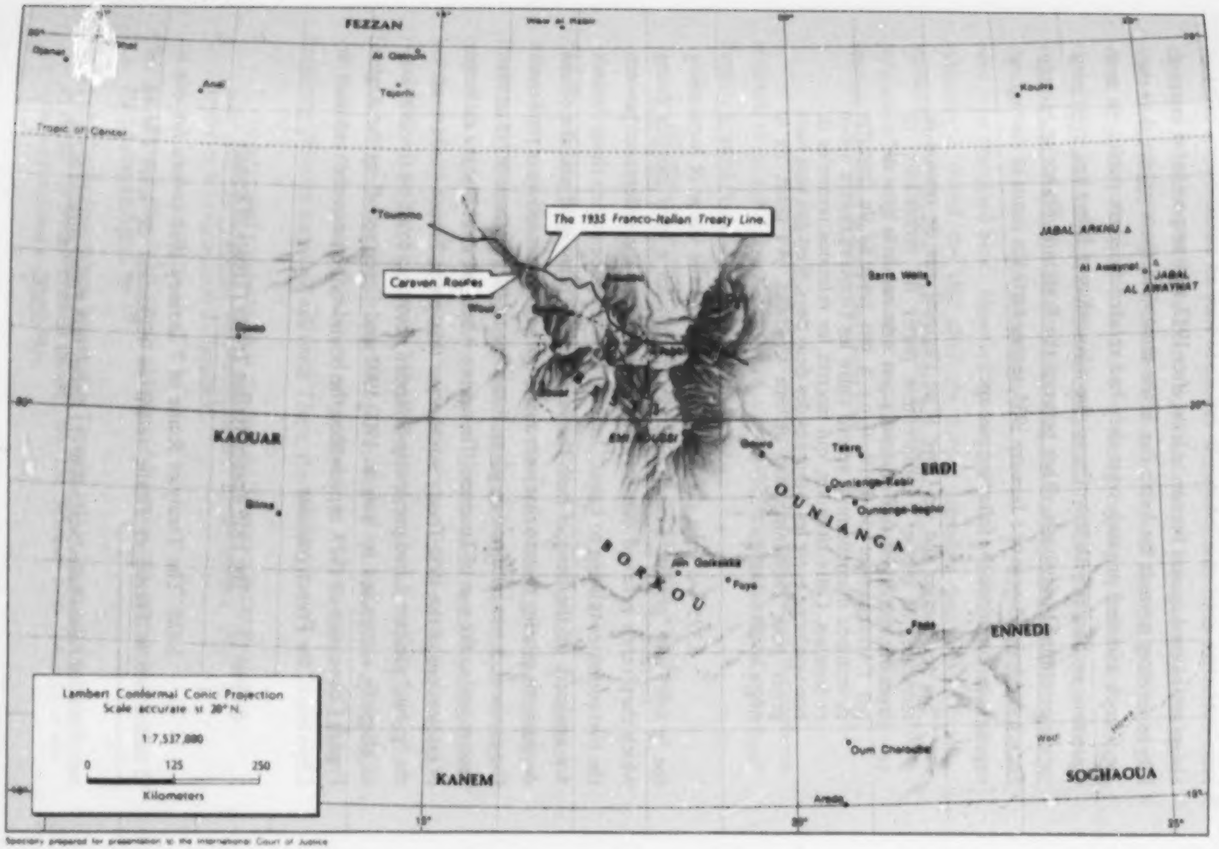
[397] Chambrun telegram of 7 January 1935, French Archives Annex, p. 422.

[398] French Report, 24 January 1934, French Archives Annex, p. 429.


0 20 40 60 80 100 120 Km.
Tummo
BARDAI
Yebbi Souma
Yebbi Bou
Aozi
Zouar
Faya
Faya

Map No. 83



Specially prepared for presentation to the International Court of Justice

5.324 The travaux préparatoires of the 1935 Rome Accords are most instructive as to what led Italy to reduce to such an extent the claims it had always maintained against France, at least after 1912, with respect to the extent of Libyan territory towards the south. But at the same time, these travaux show that the French admitted privately what they had refused to admit publicly in their diplomatic exchanges with Italy: the southern boundary of Libya had never been validly determined previously, either between the Porte and France or between France and Italy. A note of 1 January 1935, setting forth the status of the ongoing negotiations, contained the following passage:

> "Sur les confins sud de Libye il ne s'agissait pas de cession de territoire, ni même à proprement parler de rectification de frontière, car à l'est de Toummo, point terminal de la ligne définie par l'Arrangement de 1919, il n'y a pas jusqu'ici de frontière déterminée d'un commun accord entre les Gouvernements italien et français. Cette situation, qui interdit les relations normales de bon voisinage entre les Autorités des deux pays, n'est pas sans nous gêner pour l'administration de nos Colonies. Au cours de la négociation actuelle ...[399]."

5.325 At least the Rome Accords had the virtue of harmonising the "public" and "private" French positions, if only for a brief moment during which the French believed that they had finally settled the differences between the two countries relating to Libya. Indeed, as can be seen when those Accords are analysed, on the basis of both the text of the Treaty itself and the official declarations relating thereto that were made by the representatives of the French Government, it was admitted de plano that prior to 1935 no boundary had been determined to the east of Toummo. Then, once it became clear that the exchange of ratifications of the 1935 Treaty would never take place, France would revert to the "public" position it had previously defended according to which the 1899 line, as allegedly recognized by Italy in 1900-1902 and "interpreted" by the Anglo-French Convention of 1919, represented the boundary between the territories of Libya and of the French colonies.

SECTION 17. The 1935 Franco-Italian Treaty (Treaty of Rome)

5.326 The Treaty of Rome of 7 January 1935 (whose full title is "Traité entre la France et l'Italie relatif au règlement de leurs intérêts en

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[399] Note on Franco-Italian negotiations of 1 January 1935, French Archives Annex, p. 419.

Afrique") is one of eight documents signed on the same day by Mussolini and Laval[400]. In addition to the Treaty, the General Declaration and the secret exchange of letters relating to France's renunciation of any interest in Ethiopia, Mussolini and Laval signed Minutes relating to Central Europe, a Protocol on Arms, a Protocol attached to the "African" treaty, relating to freedom of passage through the Strait of Bab-el-Mandeb, a Special Protocol on Tunisian questions, and a second exchange of letters concerning the Franco-Ethiopian railway. Only the first two of these eight documents are relevant to the present dispute and need to be examined here. However, to these should be added the official press communiqué issued the day after the formal signature and which, it may legitimately be assumed, is an accurate representation of the events it describes, particularly since its text was also negotiated by the two delegations and was officially distributed in both France and Italy.

5.327 The press communiqué contains a synthesis of the contents of certain of the eight above-mentioned documents. With respect to the "African" treaty, it is noted that it -

> "... délimite les frontières entre la Libye et les colonies françaises limitrophes et entre l'Erythrée et la Côte française des Somalis en application de l'art. 13 du Pacte de Londres...[401]"

Thus, it indicated in general terms that the Treaty was essentially a boundary delimitation treaty, the term being applied in the case of both Libya and Somalia. However, in the ensuing paragraphs different terminology was applied to each case. With respect to the boundary between Eritrea and French Somalia, care was taken to state that this boundary "est rectifiée", and the same formulation was repeated when the results of "cette rectification" were set out. Therefore, as to Eritrea and French Somalia, it was recognized that a boundary already existed and that the Treaty had the effect of modifying it. With respect to Libya, completely different language was used. There, the boundary -

> "...est déterminée par une ligne qui part de Toummo, point final du tracé fixé par l'accord italo-français du 12 septembre 1919, et rejoint la frontière ouest du Soudan... ."

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[400] See, Franco-Italian Treaty (Treaty of Rome) of 7 January 1935, International Accords and Agreements Annex, No. 25.

[401] Franco-Italian Press Release published on 7 January 1935 in Les accords Franco-Italiens de Rome, "Le Monde Colonial Illustré", No. 139, February 1935. (A copy of this document is attached as Exhibit 54.)

This language makes it clear that the object in the case of Libya's boundary was to "determine" a boundary that had not previously been determined. This distinction is made again in a carefully drafted sentence describing the area covered and the main oases (Aozou and Ouezenti) of the "territoires ainsi reconnus comme appartenant à la Libye". In other words, since this was not a "rectification" but a "determination" of the boundary, it was correct to say that the territories in question were "recognised" as belonging to Libya rather than "transferred" to Libya.

5.328 The official press communiqué of 8 January was an expression of the recognition by France and Italy of the situation on the ground at the time the 1935 Treaty was signed: the two States recognised in the clearest possible terms that to the east of Toummo no boundary had been determined before that date. The fact that ratifications of the Treaty were not subsequently exchanged, and thus that the boundary it established did not thereafter acquire the status of a boundary established by treaty, in no way detracts from the legal significance of that recognition insofar as the situation prior to 1935 is concerned.

5.329 In a more condensed manner, the difference between the two delimitations may also be discerned in the wording of the relevant provisions of the Treaty. The press communiqué was therefore in perfect harmony with the text of those provisions, whose meaning it accurately reproduced.

5.330 For example, with respect to the boundary between Eritrea and the Somali Coast, Article 4 provides that -

> "[l]e tracé suivant sera substitué à la délimitation établie ... par les Protocoles de Rome en date du 24 janvier 1900 et 10 janvier 1901 ... ."

The question of modification of a boundary was therefore explicitly involved, since the new one was to replace the earlier one. As a result, the failure of the parties to satisfy the condition required for the 1935 Treaty to enter into force and, as a result, establish a boundary meant that the previously-established boundary was to continue in effect.

5.331 Article 2 of the Treaty, relating to Libya, is quite different:

> "La frontière séparant la Libye de l'Afrique occidentale française et de l'Afrique équatoriale française à l'est de Toummo, point terminal de la ligne fixée par l'Accord de Paris du 12 septembre 1919, sera déterminée ainsi qu'il suit:
>
> Une ligne directe partant de Toummo et rejoignant l'Ehi Domar Doba;
>
> De l'Ehi Domar Doba, une ligne droite rejoignant l'extrémité nord-est de l'Ehi Dogo Loga;
>
> De l'Ehi Dogo Loga, une ligne droite rejoignant l'Enneri Turkou en un point situé en aval du confluent de celui-ci avec l'Enneri Guesso, de telle sorte que le tronçon Dogo Loga-Enneri Turkou de la piste caravanière du Fezzan vers Bardai reste en territoire français;
>
> De ce point, une ligne droite rejoignant le confluent de l'Enneri Bardague avec l'Enneri Momogoi ou Ofouni;
>
> De ce confluent, la ligne des hauteurs séparant l'Enneri Bardague de l'Enneri Momogoi ou Ofouni, puis la ligne des crêtes jusqu'à l'Ehi Madou, de telle sorte que les affluents de droite de l'Enneri Bardague-Zoumeri, notamment les Enneri Odri, Tinaa, Ouadake, Araye, Mecheur, Tirenno, Agueake, Kayaga, Abeche, restent en territoire français;
>
> De l'Ehi Madou, une ligne droite rejoignant Yebigue, à 10 kilomètres en amont de Yebbi-Souma;
>
> De ce point, une ligne droite rejoignant le point géodésique d'Aozi;
> De ce point, une ligne droite rejoignant l'intersection du 24ème degré de longitude est Greenwich et du 18eme degré 45' de latitude nord.
>
> Ce tracé est indiqué sur la carte No. 1 jointe au présent traité."

5.332 The introductory paragraph of Article 2 speaks of the "determination" and not of the "modification" of the boundary. This is because here, unlike the situation referred to in Article 4, there was no previous agreement that could have been modified; to the contrary, the "accord de Paris du 12 septembre 1919" is referred to in order to recall that that agreement had drawn the boundary only west of Toummo and not to its east. This shows that the reason why the 1935 Treaty spoke of the "determination" of the boundary to the east was because it had not previously been determined. As a result, the failure of the 1935 Treaty to establish a conventional boundary necessarily meant that the status quo - that is, a situation where the boundary had not been determined - was maintained.

5.333 It will be recalled that the preamble to the 1935 Treaty contains the famous "release" given by Italy to France concerning the question of "fair compensation", stating that the aim of the Treaty was -

> "... de régler d'une manière définitive les questions pendantes au sujet ... de l'Accord de Londres du 26 avril 1915, en son art. 13 ... ."

Two observations may be made with respect to this wording. *First*, both States thereby explicitly acknowledged that prior to 1935 France had not entirely discharged its obligations towards Italy resulting from Article 13 of the 1915 Treaty of London, for it was expressly indicated that France was to discharge them by means of the 1935 Treaty[402]. *Second*, there is an obvious corollary to this acknowledgment; the result of the failure of the 1935 Treaty to establish a boundary was that such obligations continued to exist, since the event that was supposed to extinguish them did not occur.

5.334 The same remarks may be made about the General Declaration, another of the eight documents signed on 7 January 1935, which contained similar wording according to which -

> "... les conventions en date de ce jour ont assuré le règlement des principales questions que les accords antérieurs laissaient pendantes entre eux et, notamment, de toutes les questions relatives à l'application de l'art. 13 de l'accord de Londres du 26 avril 1915[403]."

5.335 This conclusion drawn from this analysis of the 1935 Treaty and of the related documents - that they constituted the recognition by Italy and by France that there had been no previous conventional boundary separating Libya from the French colonies east of Toummo - is confirmed by the French parliamentary materials that are part of the *travaux préparatoires*.

5.336 The decisive confirmation is to be found in several parts of the *Exposé des motifs* accompanying the draft law, which was submitted to the French Parliament in the name of the President by the Foreign Minister (Laval) and the Colonial Minister (Rollin)[404]. It is fully spelt out there, in making reference to the Franco-Italian Accord of 12 September 1919 that had rectified the western and southwestern boundaries as far as Toummo, (i) that "l'accord ne put aller au-delà"; (ii) that this was officially acknowledged by the parties to the 1919 Accord, who reserved "d'autres points pour un prochain examen"; and (iii) that therefore:

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[402] Of course, Italy's rights and titles inherited from the Ottoman Empire, recognized in Article 10 of the Treaty of London, remained unaffected.

[403] *J.O.R.F.*, 22 March 1935, p. 1202. (A copy of this page is attached as *Exhibit* 55.)

> "[l]'arrangement du 12 septembre laissait l'Italie et la France sans frontière conventuelle [sic; read "conventionnelle"] à l'Est de Tummo, le cabinet de Rome s'étant toujours refusé à reconnaître que la ligne de démarcation fixée par les accords franco-anglais de 1899 et de 1919 entre les zones d'influence de la France et la Grande Bretagne pût valoir à l'égard de l'Italie comme frontière politique entre territoires de souveraineté."

5.337 A little further on in the same document it is mentioned that after 1928, the date of Italy's occupation of the Fezzan -

> "... il apparut que l'absence de frontières gênerait les autorités locales des deux pays pour coordonner leur action de police et de contrôle des tribus."

5.338 Finally, in another passage, it is reaffirmed that the 1919 Franco-British line "...n'avait, il convient de le répéter, jamais été reconnue par l'Italie".

5.339 When he addressed the Senate in response to criticisms from the opposition, Laval made a very carefully worded statement that once again confirms the French Government's acknowledgment that there had been no delimitation of the boundary to the east of Toummo prior to 1935. The statement is all the more significant in that its aim was to correct the imprecise language used by certain members of parliament who had accused the government of "surrendering" too much to Italy concerning Libya. The Minister's statement contained the following passage (session of 26 March 1935, p. 389):

> "C'est ainsi que nous avons fait cette rectification de frontières, ou plutôt cette délimitation de frontières." (Emphasis added.)

In the same speech, Laval made clear, in very carefully chosen terms, that the French government could not be reproached for excessive generosity towards

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[404] J.O.R.F., Documents parlementaires, Chambre, session ordinaire, séance du 26 février 1935, annexe n° 4817, p. 374-375. (A copy of these pages is attached as Exhibit 56.)

Italy, but that to the contrary, Italy's success was in the end very slight and that Mussolini had settled for very little compared with Italy's earlier claims:

> "Pour ces 114.000 kilomètres carrés, combien d'habitants? Il y en a en tout 900; il y en aurait davantage, que je ne le regretterais pas. On a dit qu'il y avait quelques palmeraies: je regrette qu'il n'y en ait pas davantage. Je regrette que la cession que mon pays a faite à l'Italie ne constitue pas une cession plus avantageuse. Ce que je sais, c'est que M. Mussolini, avec cet esprit de décision que j'ai admiré lors de nos entretiens, n'a pas hésité à accepter la proposition que je lui faisais et qu'il a considéré qu'elle mettait un terme à la réclamation du Gouvernement italien...[405]."

Of course, Laval did not dare explain to the Senate why Mussolini had accepted a proposal that was so little to Italy's advantage!

5.340 It is interesting to note that, at the time, the British Foreign Office considered that the 1935 Treaty had "determined" the boundary between Libya and the French colonies, which prior thereto had not been "determined". This constitutes a particularly significant confirmation when it is remembered that Great Britain was not simply a bystander in relation to the territorial dispute in question, but that British diplomats had been among the most active protagonists in the area, and had assumed the responsibility of participating in the drafting of a number of international acts bearing on the outcome of this dispute. Not only that, the two critical treaties cited by France to support the contention that such a boundary did exist prior to 1935 - the 1899 Declaration and the Convention of 8 September 1919 - were treaties to which Great Britain was party.

5.341 In fact, not the slightest hesitation appeared in the British documents at that time when it came to explaining the meaning of Article 2: they considered that the Article established for the first time a boundary in a region where no boundary had previously existed:

> "Under the Libyan Agreement, Italian sovereignty has been recognised by France over a quadrilateral strip of territory, of some 114,000 square kilom., in the area where Southern Libya meets French Equatorial Africa. The frontier in this area had previously

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[405] Emphasis added. The passage quoted reveals utter disregard for the inhabitants of the region. Even though there may only have been 900 inhabitants, they were still human beings.

> *not been determined*, and the territory in question was in dispute[406]."

Then, a few lines further on in the same document, it is added that:

> "This arrangement, together with the cession of the Sarra triangle by the Sudan to Libya in July 1934, *completes* Libya's borders and makes the colony a well-rounded-off geographical unit." (Emphasis added).

An earlier memorandum on the 1935 Treaty contains the following passage, which is also very explicit:

> "The frontier in this area had never previously been demarcated and the effect of the agreement is that France has now definitely recognised as Italian territory the ownership of which had not been previously determined...[407]."

5.342 The main conclusions to be drawn from the 1935 Treaty and the French parliamentary *travaux préparatoires* are these:

First, irrespective of the entry into force of the Treaty, France acknowledged in 1935 that the boundary between Libya and the French colonies had never previously been determined east of Toummo.

Second, France also acknowledged that the line resulting from the Anglo-French Declaration of 1899 and the Anglo-French Convention of 1919 had never been recognised by Italy as establishing to the east of Toummo the course of a "frontière politique entre territoires de souveraineté", despite the Franco-Italian Accords of 1900-1902.

Third, France admitted that the 1935 Treaty of Rome was historically the first convention to determine the southern boundary of Libya to the east of Toummo; and since the Treaty did not formally enter into force, the previous status quo, which was maintained, necessarily eliminates the possibility of any conventional boundary.

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[406] Memorandum respecting Franco-Italian Relations, 22 February 1935, p. 6, R 1177/1/67. (Emphasis added.) *British Archives Annex*, p. 281.

[407] FO briefing memorandum on the 1935 Franco-Italian Agreements, p. 3, date unclear but dating from 1935. FO 371/19492. *British Archives Annex*, p. 284. It is clear from the context and from the later memorandum first quoted from that "demarcated" in the quoted passage was used in the sense of "delimited" or "determined".

Fourth, France acknowledged that it was Italy that had made significant concessions as to the boundary - a sort of application of Article 13 of the Treaty of London of 1915 in reverse.

Fifth, the foregoing acknowledgments and admissions were made formally and officially by the French Government.

SECTION 18. Events Following the 1935 Treaty

5.343 The first paragraph of Article 7 of the Treaty of Rome read as follows:

> "Le présent Traité sera ratifié et les ratifications seront échangées à Rome dans le plus bref délai possible. Il entrera en vigueur le jour de l'échange des ratifications."

Thus, the parties chose ratification as the appropriate way of expressing their consent to be bound by the Treaty, and made the entry into force of the Treaty conditional upon the exchange of such ratifications.

5.344 As will be seen, the exchange of ratifications never took place due to the significant changes affecting international relations between France and Italy after the Treaty of Rome was signed. Therefore, the boundary determined in Article 2 did not acquire the status of a conventional boundary between Libya and the French colonies.

5.345 This observation does not detract from the fact that in both France and Italy all the procedures had been accomplished, and all the legislative measures adopted, necessary under the municipal law of each country for the authorization of the respective governments to ratify and exchange instruments of ratification. However, such authorizations could not take the place of the exchange of ratifications specifically required by the Treaty. Indeed, the exchange did not occur because, as a result of events unrelated to the boundary question, Italy considered the Treaty "historiquement dépassé"[408]. Nevertheless, the fact that each State went as far as it did toward putting the Treaty into effect is not without significance in terms of their conduct in respect to the boundary at the time.

5.346 The very terms of the municipal laws in both France and Italy made it clear that in the circumstances neither State would be bound. The French law approving the Treaty stated in its single article that "le Président de la République est autorisé à ratifier" the Treaty of Rome, and to execute it if applicable[409]. Therefore, by its very wording the law did not express France's intention to be bound by the Treaty but only Parliament's decision to authorize the President to bind France by means of the establishment and communication of the instrument of ratification. As far as Italian law is concerned[410], it is true that Article 1 of the Treaty provided for "full and entire execution" of the 1935 Treaty (using the traditional constitutional formula). However, Article 2 of the same law expressly linked the domestic implementation of the Treaty to its entry into force on the international level:

> "The present law shall enter into force in the manner and at the time laid down in Article 7 of the Treaty mentioned in the preceding article."

5.347 It only remains now to recall briefly the well-known events that led Italy on 17 December 1938 to communicate officially to France what had by then become its final decision not to ratify the Treaty of Rome. Indeed, the ink had barely dried on the agreements before relations between the two countries became greatly strained due to the Ethiopian affair, which had become Italy's main concern. Italy criticised France because, during the 1935 Spring Session at the League of Nations, France had failed to adopt the attitude it had promised. In addition, Italy could not forgive France for voting in favour of what the Fascist authorities called the "inique sanzioni" (unfair sanctions) that had been adopted by the Council of the League of Nations on 14 October of that year, twelve days after Italy had unleashed its attack on Ethiopia. The few periods of calm occurring in Franco-Italian relations subsequently were too short and superficial for ratification of the Treaty to be seriously contemplated, especially since, in the meantime, the Italian press had spoken out against the Treaty, which in its view sacrificed Italian interests to France.

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[408] See, para. 5.350, below.

[409] A copy of the law was forwarded to the Foreign Office from the British Embassy, Paris, in Dispatch No. 490, 28 March 1935, FO 371/19498, British Archives Annex, p. 286.

[410] Law No. 1187 of 13 June 1935 (G.U. 11 July 1935, No. 160). (A copy of this law is attached as Exhibit 57.)

5.348 The changes in the general political scene and, in particular, the Rome-Berlin axis that had been proclaimed in November 1936 and was further consolidated in the ensuing years, led inevitability to a decision finally to reject the 1935 Accords, despite countless approaches and numerous gestures of good will on the French side. The last of these gestures was the accreditation of a new French ambassador to the King of Italy and "Emperor of Ethiopia" in October 1938 (relations having been kept at the level of chargés d'affaires so long as France had refused to use this title). This finally brought François-Poncet to Rome as Ambassador.

5.349 On 2 December 1938, François-Poncet presented a note verbale to Ciano, the Foreign Minister, with a view to obtaining clarification as to Italy's position on the Rome Accords[411]. By diplomatic note of 17 December 1938[412], Ciano replied that there could be no further hope of any ratification by Italy because of the unfriendly attitude adopted by France since 1935. François-Poncet responded in a note from the French Government, dated 26 December 1938[413], in which Ciano's criticisms of France were rejected and an attempt was made (notwithstanding the obvious finality of the Italian decision) to keep the matter open.

5.350 The Italian note of 17 December 1938 consisted of two parts: one of a legal nature; the other related to political considerations. Insofar as the legal aspect was concerned, the note said that -

> "...[o]n a bien entamé immédiatement après la signature les procédures constitutionnelles préparatoires à la ratification, mais

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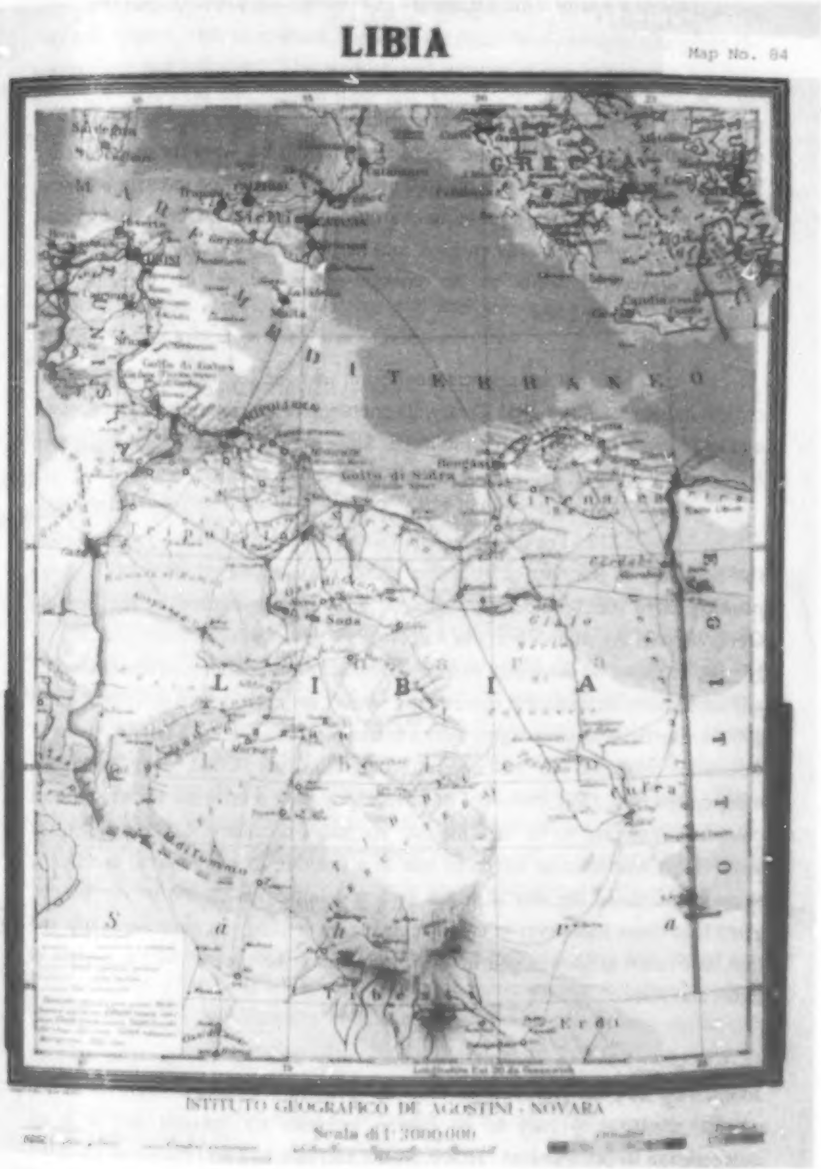
[411] French Note Verbale to Ciano, 2 December 1938. This document (and the ones mentioned in the next two footnotes) are on microfilm at the Italian diplomatic archives. Reproduction is not allowed for technical reasons; but the text of both documents has been widely published. See, for example, the French text of the exchange of letters and a subsequent note setting out the resulting position of the French Government taken from the British Foreign Office files: FO 371/22429, a copy of which is attached as Exhibit. 58.

[412] Ciano's Reply of 17 December 1938.

[413] Ibid.

Map No. 84



Source: Istituto Geografico de Agostini-Novara
August 1938

> celle-ci n'a jamais été effectuée ... Le Traité ... n'a donc jamais été parachevé."

Among the various political considerations mentioned, the main one should be particularly noted: that the "notable sacrifices" agreed to by Italy with respect to its colonial interests should have been compensated by, what the note called, a "fair understanding" by France of "Italy's needs for expansion in eastern Africa". According to Italy, France's subsequent attitude towards its policy in Ethiopia was the reverse of what Italy was entitled, and had been led to expect. This was why the 1935 Accords were to be considered as "vidés de contenu" and "historiquement dépassés".

5.351 It is apparent, therefore, that the Ethiopian question had a critical influence on the 1935 Treaty, its contents at the time of the negotiations, and its ultimate failure to enter into force. Since the pactum sceleris had not been honoured by one party, it was not to be honoured by the other.

5.352 The foregoing analysis inevitably leads to the conclusion that the boundary to the east of Toummo remained undelimited after 1935. Italy's position as to this boundary is indicated on a map published by the Instituto Geografico de Agostini-Novara in August 1939, which is reproduced here as Map No. 84. It shows no boundary east of Toummo. Consequently, in the absence of any subsequent delimitation agreements, when Libya acceded to independence in 1951, it exercised its sovereignty over a territory whose southern boundary east of Toummo remained to be determined. Similarly Chad, upon achieving independence in 1960, exercised its sovereignty over a territory whose northern boundary remained to be determined. As Italy's successor, Libya retained the same rights and titles as Italy and was in a position to put forward exactly the same claims as to the way in which such a delimitation should be carried out, given that there had never been any convention settling the question validly and that, as France acknowledged in 1935, Italy had at no time waived its territorial rights and titles.

5.353 A second conclusion may also be drawn. The solution adopted by the 1935 Treaty concerning the southern boundary of Libya involved a notable sacrifice by Italy of its Libyan interests for reasons that it is no exaggeration to call criminal. However, the sacrifice had no relation at all to the legal titles by which the delimitation should have been guided. From this point of view, it is in fact fortunate that the 1935 Treaty never entered into force, since

Libya and the peoples of the region were not made victims of this perfidous act of Italy and France; and, as a result, the relevant legal titles can now prevail in the search for a just solution. The welfare and desires of the indigenous peoples, which was ignored by France and Italy, may now come into play in resolving this dispute.

SECTION 19. Libya During World War II; the Senoussi Alliance with the Allies

5.354 Libya was the theatre of the longest campaign of the war; and Fascist rule in Tripolitania did not end until the spring of 1943. It was a devasting war for Libya. In the words of one authority -

> "... Libya, and particularly northern Cyrenaica, suffered all the miseries of being repeatedly fought over. Compared with densely populated Europe, there was relatively little to be broken, but what was breakable - the towns and ports, the villages, airfields, roads, and installations built up by the Italians - was wrecked, and with it the hope of successful Italian colonisation in Africa[414]."

5.355 The Senoussi played a major role for Libya during the war. In October 1935, a group of 51 Tripolitania and Cyrenaica leaders representing some 18,000 Libyan exiles met in Alexandria to discuss a common course of action. This was followed by a second meeting in Cairo on 4 August 1940, at which resolutions were adopted to participate in the war with the British army under the leadership of the Senoussi Emirate, which was proclaimed at the same meeting. The Libyan Arab Force thus came into being; it actively participated in support of the Allies in the long campaign, fighting under its own flag. The undertaking of the Senoussi to organise such a force was set out in an agreement of 3 August 1940 with the British Government represented by Colonel Bromilow, Assistant Military Secretary, British Troops in Egypt, and signed by Emir Idris[415].

5.356 Although the matter of Libyan independence was raised at the time with the British, the issue was postponed. However, in a statement in the House of Commons on 8 January 1942, the British Foreign Secretary, Anthony

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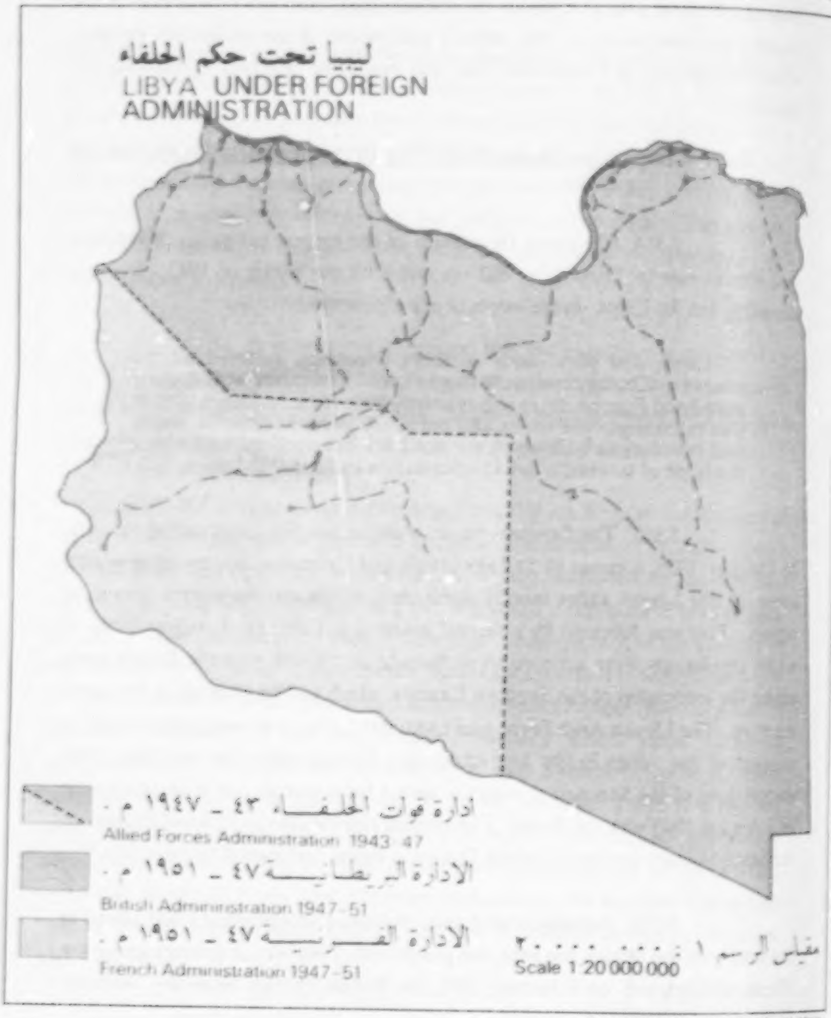
[414] Wright, J: Libya. London, Ernest Benn Limited, 1969, p. 185. (A copy of this page is attached as Exhibit 59.)

[415] Khadduri, M.: Modern Libya. Baltimore, John Hopkins Press, 1963 p. 30. It is noted here that Idris was deposed in 1969 as King of Libya.

Map No. 85


ليبيا تحت حكم الحلفاء
LIBYA UNDER FOREIGN ADMINISTRATION
ادارة قوات الحلفاء ٤٣ ـ ١٩٤٧ م .
Allied Forces Administration 1943–47
الادارة البريطانية ٤٧ ـ ١٩٥١ م .
British Administration 1947–51
الادارة الفرنسية ٤٧ ـ ١٩٥١ م .
French Administration 1947–51
مقياس الرسم ١ : ٢٠ ٠٠٠ ٠٠٠
Scale 1:20 000 000

Source: National Atlas of the Socialist People's Libyan Arab Jamahiriya, Surveying Department, 198
p. 30

Eden, paid tribute to the Senoussi contribution to the war effort, adding the following:

> "His majesty's Government is determined that at the end of the war the Senoussis in Cyrenaica will in no circumstances again fall under Italian domination[416]."

This famous declaration was to influence significantly events up until Libya's independence in 1951. It also was a recognition by Great Britain of the special status of the Senoussi.

5.357 When the war ended, British troops were in Tripolitania and Cyrenaica and French troops, which had come from the south, were in a large area that included Koufra in Cyrenaica, Fezzan and the Libya-Chad borderlands. Under an agreement between General Alexander and General Leclerc, the British were to administer in Cyrenaica and Tripolitania and the French were to administer Fezzan. The administrative dividing line is shown on Map No. 85.1. The question of Libya's southern frontier was given little attention during the war or post-war period of military administration. The important questions at the time were over the boundaries between French and British military jurisdiction and this, in turn, led to the question of the location of the north/south boundary between Tripolitania and Cyrenaica and the northern limits of Fezzan. Although the French had occupied Koufra initially, General Leclerc yielded to British insistence that it be administered by them, thereby earning a rebuke, according to the British, from General de Gaulle in London.

5.358 Thus, right up to the time of Libyan independence, France's position as to the southern territorial limits of Libya was conditioned by the fact that French forces were occupying all of the territory south of Tripolitania and wanted to stay there. The situation from the standpoint of the Libyan peoples was that all the interested Powers - including Italy and even Egypt - wanted a piece of their lands and were quarreling over who should get what, or be charged with the administration of what.

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[416] House of Commons Official Report, Parliamentary Debates, Hansard, London, Vol. 377, cols. 77-78, 8 January 1942.

5.359 British maps generally in use at the time portrayed Libya's southern boundary as following the 1935 line[417]. No one, really knew, or indeed had studied, what the status of the 1935 Treaty was, although France had stated its views, which in the light of the past history were entitled to be considered with some scepticism. Libya had no knowledge of these matters at the time. In its Atlas, first published in 1978, the boundary was shown in a fashion similar to that appearing on the maps issued by the United Nations at the time - a boundary similar to the 1935 Treaty line but not at all the line of the 1919 Anglo-French Convention[418].

5.360 As between Italy and France, the boundary question did arise in the context of the Italian Armistice Commission. In considering the limits of the demilitarized zone under negotiation, the Vichy Government took the position, and gave corresponding instructions, that since allegedly the Franco-Italian Treaty of 1935 never went into effect, the 1899 line as "interpreted" in 1919 marked the southern boundary of Libya, and that Italy had recognised this line in the 1900-1902 Accords. As seen above, this may have been good policy; but it was bad law.

5.361 The Italian delegation disagreed. Although they expressed the view that the 1935 Treaty had been "denounced" by Italy, they considered the line adopted by France and Italy in 1935, whatever its legal status might be, as a more appropriate interim line for purposes of marking a demilitarized zone than the 1899-1919 line established in an agreement to which Italy had not been a party. General Grossi expressed Italy's view in these words:

> "Même si, à la suite de la dénonciation italienne du traité du 7 janvier 1935, la question de la frontière est restée suspendue et si, par suite, son tracé peut être considéré, en droit strict, comme discutable, il est évident que la Partie italienne lorsqu'elle a fixé à l'article III de la Convention d'Armistice, la limite extérieure de la zone démilitarisée à deux cents kilomètres des confins de la Lybie méridionale, elle ne pouvait considérer comme ligne de base que celle qui, selon sa propre interprétation, devait être la frontière; certainement pas celle résultant d'un traité qui ne portait pas sa signature ...

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[417] See, e.g., para. 5.365, below. The boundary line on Map No. 85.1, taken from the Libyan Atlas, is similar.

[418] The U.N. maps contained the customary disclaimer as to international boundaries depicted thereon. Four maps issued by the United Nations both before and after Libya's independence may be found at the end of this Chapter. The last map (1958) was issued after signature of the 1955 Treaty between Libya and France.

> Ceci évidemment sans préjudice de la délimitation définitive de la frontière, question qui dépasse la compétence de cette Commission[419]."

The statement of General Grossi, thus, left open the legal status of the 1935 line and clearly indicated that the delimitation of this boundary had yet to be accomplished.

SECTION 20. Post-War Debate; 1947 Treaty of Peace with Italy; Activities at the United Nations Leading to Libya's Independence

5.362 By the end of the World War II, the Soviet Union and the United States had joined the administering Powers, Great Britain and France, as the principal Powers having an interest in the fate of Libya. The question of Italy's colonies was touched on at the Potsdam Conference in 1945, but it was not until the Council of Foreign Ministers met in September 1945 in London that the matter was given serious attention. Italy had aspirations that Libya might be returned to it.

5.363 It is not necessary to review here the various proposals made with regard to Libya at these meetings and at those held in Paris in April 1946, the initial concept being a trusteeship under the United Nations. The British felt that because of the promises made during the War[420], they could not agree to an Italian trusteeship over territory occupied by the Senoussi tribes[421]. In fact, the first proposal to grant independence was made by Great Britain at the Paris meetings, but the issue was deferred in the final text of what became Article 23 of the 1947 Italian Peace Treaty, which read as follows:

> "1. Italy renounces all right and title to the Italian territorial possessions in Africa, i.e., Libya, Eritrea, and Italian Somaliland.
>
> 2. Pending their final disposal, the said possessions shall continue under their present administration.
>
> 3. The final disposal of these possessions shall be determined jointly by the governments of the Soviet Union, of the United Kingdom, of the United States of America, and of France within one year from

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[419] Note from Gen. Grossi to the French Delegation, 12 March 1941, French Archives Annex, p. 164.

[420] See, declaration of Anthony Eden quoted above in para. 5.356.

[421] See, Whiteman, M.: Digest of International Law, Vol. 3, p. 11.

> the coming into force of the present Treaty, in the manner laid down in the joint declaration of February 10, 1947 issued by the said Governments ...[422]."

The joint Declaration of the Four Powers was incorporated as Annex XI to the Treaty. Its text was as follows:

> "1. The Governments of the Union of Soviet Socialist Republics, of the United Kingdom of Great Britain and Northern Ireland, of the United States of America, and of France agree that they will, within one year from the coming into force of the Treaty of Peace with Italy bearing the date of February 10, 1947, jointly determine the final disposal of Italy's territorial possessions in Africa, to which, in accordance with Article 23 of the Treaty, Italy renounces all right and title.
>
> 2. The final disposal of the territories concerned and the appropriate adjustment of their boundaries shall be made by the Four Powers in the light of the wishes and welfare of the inhabitants and the interests of peace and security, taking into consideration the views of other interested Governments.
>
> 3. If, with respect to any of these territories, the Four Powers are unable to agree upon their disposal within one year from the coming into force of the treaty of peace with Italy, the matter shall be referred to the General Assembly of the United Nations for a recommendation and the Four Powers agree to accept the recommendation and to take appropriate measures for giving effect to it.
>
> 4. The Deputies of the Foreign Ministers shall continue the consideration of the question of the disposal of the former Italian colonies with a view to submitting to the Council of Foreign Ministers their recommendations on this matter. They shall also send out commissions of investigation to any of the former Italian colonies in order to supply the Deputies with the necessary data on this question and to ascertain the views of the local population[423]."

It is of particular interest to note that paragraph 2 expressly required that the "wishes and welfare of the inhabitants" be taken into account in determining the final disposition of the territories concerned.

5.364 There was a wide range of reaction to the Treaty in Libya, and many different views emerged as to how to organise Libya's future. But there was general agreement in favour of the independence of a united Tripolitania,

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[422] Treaty of Peace with Italy, 10 February 1947, United Nations: Treaty Series, No. 747, vol. 49, 1950, International Accords and Agreements Annex, No. 26.

[423] Ibid. (Emphasis added.)

Cyrenaica and Fezzan. The Council of Foreign Ministers formed a Four-Power Commission to ascertain the views of the local population. It arrived in Libya in the spring of 1948. The Commission's report was taken up by the Conference of Deputy Foreign Ministers in London in the summer of 1948. Its results have been summarized as follows:

> "The commission's report ... put on record the almost unanimous Libyan desire for complete independence, but concluded that Libya was neither economically self-supporting nor ready for independence[424]."

As required by the Peace Treaty, the views of "interested governments" were solicited. Italy wanted Libya to be placed under Italian administration in the United Nations trusteeship system. For a time, this had French and Russian support. Egypt supported Libyan unity and independence but, if a trusteeship were to be decided, Egypt opted to be the administering power. In addition Egypt presented certain specific territorial claims: at first, the plateau of Sollum and the oasis of Djaraboub; later it claimed Bardia, on the Mediterranean, and three oases including the Sarra Wells. According to Khadduri, no specific territorial claims were made by any other "interested government"[425].

5.365 However, certain proposals were in fact made by France at the time. At the meetings of Deputies in 1948, the French Deputy put forward claims for frontier revision that would have placed the areas of Ghadamès and Ghat within French territory, according to British Foreign Office sources[426]. The French claims relating to the southern frontier of Libya, according to the Foreign Office -

> "... would not only restore the pre-1935 Franco-Libyan (Italian) frontier but would add three triangular pieces of territory in the Tummo and Tibesti areas to France thus straightening the frontier which would run along the Tropic of Cancer, as far as longitude 20°...."

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[424] Wright, Libya, op. cit., p. 199. (A copy of this page is attached as Exhibit 59.)

[425] Khadduri, op. cit., p. 125.

[426] Memorandum on the Frontiers of Libya, 20 October 1949, and attached map, FO 371/73813, British Archives Annex, p. 291.

These proposals were illustrated on a map attached to a report prepared by the Research Department of the Foreign Office in October 1949[427], which also showed the boundaries in Libya between areas of French and British Administration and between the three Libyan provinces. On the east, there is shown the Egyptian proposal to revise that boundary. This map has been reproduced as Map No. 85. The existing international boundary as shown on this map follows: the lines agreed, as to the Algerian frontier between France and Italy on 12 September 1919; and in the south, the 1935 Franco-Italian Treaty line.

5.366 Another French proposal bearing a date of 1946 appears on a map found in the Archives Historiques of the Ministère des Armées. There, a new line was proposed to replace the 1919 "interpretation" line. The line would start at the intersection of 20°E longitude and the Tropic of Cancer and descend in a southeastern direction to the intersection of 19°30'N latitude and 24°E longitude. Exactly when and how this proposal was made has yet to be uncovered; so far, the only reference is this map, reproduced here as Map No. 86.

5.367 The British Foreign Office report went on to say this about the 1948 French proposal:

> "It had originally been intended by the French that the Four Power Commission should examine these questions of frontier adjustment on the spot. This was not however done.
>
> The matter was not raised at the Spring Assembly nor has it arisen since, but presumably the French claims stand."

The British report summed up the situation this way:

> "There now seems to be general agreement that the question of revision of the external frontiers of Libya should be left over until a decision on the disposal of the Libyan Territories has been reached, and that thereafter the question of frontiers should be settled by a Boundary Commission set up by the United Nations. This procedure would be the most satisfactory from the United Kingdom point of view[428]."

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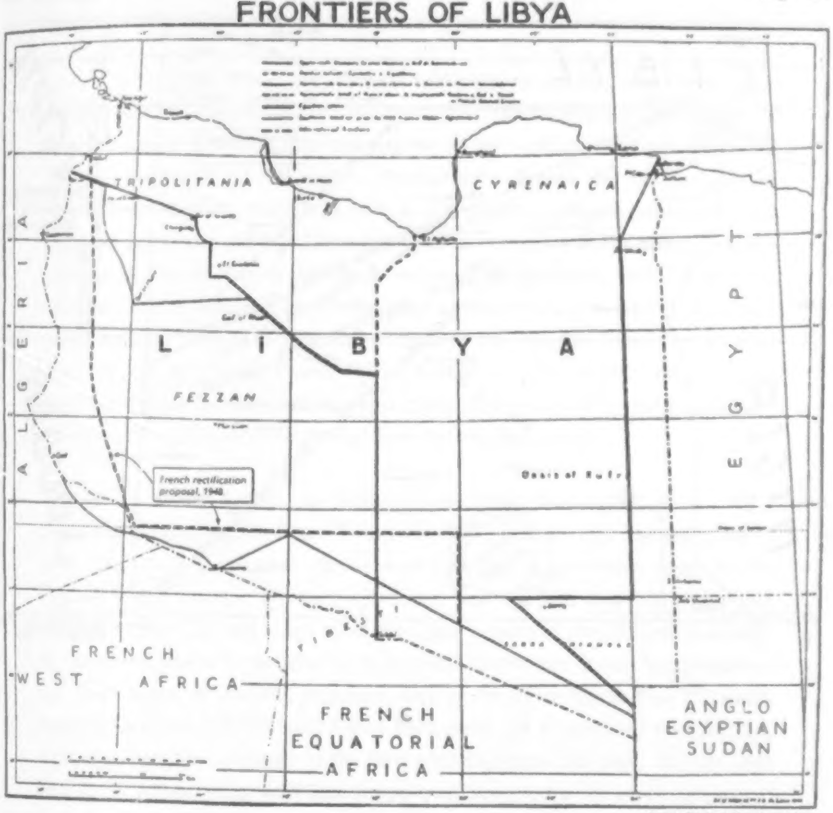
[427] Ibid.

[428] The word "revision" used here was used properly: the French proposals involved not only a revision of the boundary established in the Anglo-French Accord of 12 September 1919 but also a revision of the boundary that the French Government maintains existed by virtue of the 1899 and 1919 agreements.

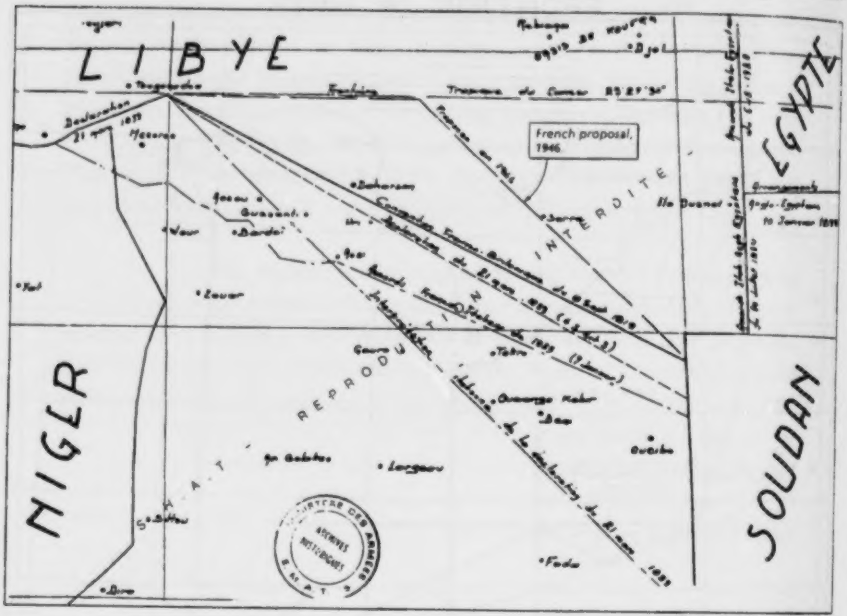
Map No. 85

FRONTIERS OF LIBYA



Source: Research Department of the British Foreign Office, 1948.

Map No. 86



Source: Archives Historiques d'
Ministère des Armées

This was all quite in line with the British view of the frontier problem at the time the 1935 Treaty was signed.[429]

5.368 Thus, the French Government sought, just three years before Libya's independence, to have the United Nations award it large chunks of Libyan territory between Libya and Algeria on the west and between Libya and France's territories on the south. Furthermore, France did not propose to negotiate this cession of territory with an independent Libya; it preferred a *fait accompli* before the status of Libya had been determined. In any event, France's claims were clearly at odds with the principle of *uti possidetis*, since on no basis were the French proposals justified by prior international agreement or any other juridical basis. In fact, its proposal concerning the Algerian frontier with Libya was flatly contrary to the Franco-Italian Accord of 12 September 1919. At the time, the French Government was apparently not motivated by the principle of the intangibility of frontiers inherited from the colonial period.

5.369 Under the terms of the Joint Declaration of the Four Powers accompanying the Peace Treaty, the Council of Foreign Ministers was to refer the Libyan question to the General Assembly if agreement could not be reached within a year. No such agreement was reached, and the matter was referred to the U.N. and taken up at the Third Session of the General Assembly in April 1949, where it was referred to the First Committee and to Subcommittee 15. Once again, the various proposals, such as the Bevin-Sforza Plan[430], which was only narrowly defeated on 18 May 1949, need not be reviewed here for they have only marginal reference to the territorial dispute in this case. Shortly after that Plan's defeat, Idris, with British approval, announced the independence of Cyrenaica and his assumption of authority as Emir. The Cyrenaican constitution was adopted on 11 October 1949, with the Emir as head of State and commander of the armed forces.

5.370 There was no discussion of Libya's boundaries during the meetings of the First Committee or of Subcommittee 15 during the fall of 1949. But on 11 October 1949, another Committee, made up of 21 members, which was designated Subcommittee 17, was appointed to consider all proposals concerning the disposal of the former Italian colonies. Subcommittee 17 left no formal minutes of its 29 sessions held between 11 October and 1 November; however a general account may be found in Adrian Pelt's book[431]. One thing that stands out from this account is the importance, in the course of these discussions, accorded to Anthony Eden's declaration to the Senoussi in 1942[432]. Subcommittee 17 issued its report on 1 November 1949, which was taken up at once by the First Committee.

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[429] *See*, generally, Section 15, above, starting at para 5.284.

[430] Under the Plan, Libya was to gain independence in 10 years; but in the meantime trusteeships were to be accorded Great Britain in Cyrenaica, Italy in Tripolitania, and France in Fezzan.

5.371 One episode during the proceedings of Subcommittee 17 concerned Libya's eastern frontiers. In the light of Egypt's earlier requests for rectification of its boundary with Libya, the Pakistani member suggested that this be a task assigned to the proposed U.N. Commissioner and Council. The following is Pelt's account of the rejection of this proposal:

> "The USSR representative strongly opposed this proposal, arguing that this was a historical tactic for the partitioning of colonies which, in the case at issue, would encourage attempts to grab areas of Libyan territory. He suggested that any demarcation of Libya's frontiers should be carried out by the future Libyan Government in conjunction with its neighbours. The French, United States, and United Kingdom representatives having also raised objections, the Pakistani proposal was rejected. At a later meeting, the Egyptian representative again raised the question, insisting that, under paragraphs 2 and 3 of Annex XI to the Treaty of Peace with Italy, the question of the adjustment of frontiers, as distinct from delimitation, had been left to the "Big Four" and therefore had subsequently been referred to the General Assembly, together with the other issues involved, on their failure to agree among themselves. In the face of continued opposition, and in the absence of any further action by the Sub-Committee, he reserved the right to raise the matter in the First Committee itself[433]."

5.372 The report of Subcommittee 17 recommended that Libya be established as a single independent State comprised of Cyrenaica, Tripolitania and Fezzan. Neither the United Kingdom nor France, however, were ready to promote a united Libya[434]. After full debate, on 19 November 1949 the First Committee reported its resolution to the General Assembly, which was adopted in its plenary session on 21 November 1949 as Resolution 289 (IV). While abstaining from a vote on the resolution as a whole, France declared its acceptance of the verdict of the United Nations and pledged that it would give its implementation all the assistance required[435].

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[431] Pelt, A.: *Libyan Independence and the United Nations*, New Haven and New London, Yale University Press, 1970, p. 891, *et seq*. Pelt was appointed United Nations Commissioner in Libya pursuant to United Nations Resol. 289 (iv) of 21 November 1949. United Nations, *Official Records of the Fourth Session of the General Assembly*, Plenary Meetings, 250th Meeting, 21 November 1949. (A copy of the text of the Resolution is attached as *Exhibit* 60.)

[432] *See*, para. 5.356, above.

[433] Pelt, *op. cit.*, p. 98. (A copy of this page is attached as *Exhibit* 61.)

5.373 Resolution 289 (IV) was divided into three sections, Section A and C being of pertinence here. The preamble and initial paragraphs of Section A provided as follows:

> "The General Assembly,
>
> In accordance with Annex XI, paragraph 3, of the Treaty of Peace with Italy, 1947, whereby the Powers concerned have agreed to accept the recommendation of the General Assembly on the disposal of the former Italian colonies and to take appropriate measures for giving effect to it,
>
> Having taken note of the report of the Four Power Commission of Investigation, having heard spokesmen of organizations representing substantial sections of opinion in the territories concerned, and having taken into consideration the wishes and welfare of the inhabitants of the territories, the interests of peace and security, the views of the interested Governments and the relevant provisions of the Charter,
>
> A. With respect to Libya, recommends:
>
> 1. That Libya, comprising Cyrenaica, Tripolitania and the Fezzan, shall be constituted an independent and sovereign State;
>
> 2. That this independence shall become effective as soon as possible and in any case not later than 1 January 1952;
>
> 3. That a constitution for Libya, including the form of the government, shall be determined by representatives of the inhabitants of Cyrenaica, Tripolitania and the Fezzan meeting and consulting together in a National Assembly ... ."

5.374 There are two remarks to make here about this text. First, the unified and independent State of Libya was created as a true child of the United Nations[436]. Never before had States pledged to accept in advance the recommendations of the General Assembly, a delegation of virtually legislative power. But it might be said that it was appropriate that Libya be selected for such a unique birth. For Libya had existed as an entity for over a hundred years; it had not been artificially created by a colonial power on the basis of administrative convenience. Its existence and its boundaries were not to be decided at the whim of the States whose territories or possessions bordered it.

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[434] Ibid., p. 100.

[435] Ibid., p. 108.

[436] See, however, para. 1.31, et seq., above.

5.375 The second aspect of the Resolution is that it evolved in part from an attempt to take into consideration the "wishes and welfare of the inhabitants of the territories". This, indeed, had been mandated by Annex XI to the Italian Peace Treaty. In the determination of the attribution of territory as between Libya and Chad in the present case, this factor must certainly have relevance. Section A also provided for the appointment of a United Nations Commissioner in Libya and a Council to advise him.

5.376 Section C of the Resolution is directly pertinent:

> "The General Assembly,
>
> Considering its recommendations regarding the disposal of the former Italian colonies,
>
> Calls upon the interim Committee of the General Assembly to study the procedure to be adopted to delimit the boundaries of the former colonies in so far as they are not already fixed by international agreement, and report with conclusions to the fifth regular session of the General Assembly[437]."

According to Pelt, the boundary question had already been taken up at three sessions of Subcommittee 17. What emerged was the conclusion, concurred in by the First Committee, that the General Assembly's task was to fix a procedure for delimiting the boundaries of the former Italian colonies rather than itself to delimit or adjust them[438]. It was this task that Resolution 289 (IV) assigned to the Interim Committee. After a rather protracted technical discussion, the Interim Committee addressed the task in January 1950. In drawing up the

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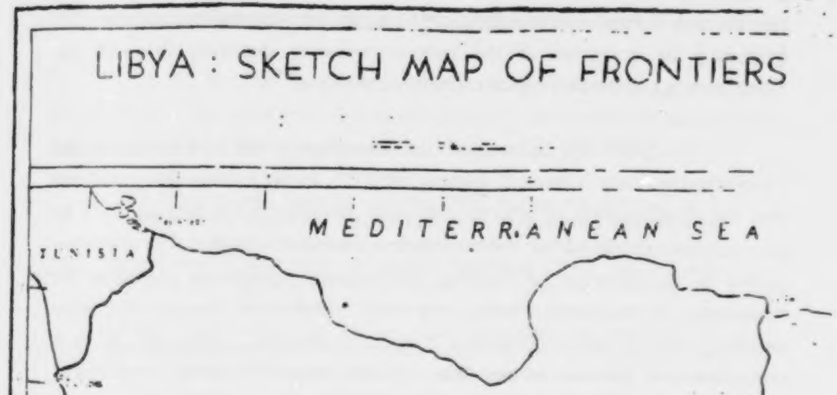
[437] A/AC.18/103, 27 January 1950, "Study of the Procedure to Delimit Boundaries of the Former Italian Colonies", United Nations, Official Records of the Third Session of the General Assembly, Interim Committee, 1950, p. 2 (A copy of the Study is attached as Exhibit 62.)

[438] Pelt, op. cit., p. 420. However, the French representative on Subcommittee 17, for one, expressed the view that the General Assembly did have the power to delimit boundaries not then determined or delimited.

Map No. 87



Source: Map 241 UN January, 1950

ground-rules of the Committee, on the suggestion of France, it was made clear that the task in hand was to delimit not to adjust the boundaries in question.[439] Professing its ignorance of the various boundary questions involved, the Committee asked the Secretariat to study the problem[440].

5.377 The Secretariat's memorandum to the Interim Committee containing the Study is dated 27 January 1950[441]. In the introduction it is stated that the determination of whether individual boundaries are "already fixed by international agreement" was for the Interim Committee to make. The study then turned to the question of "existing international agreements regarding the boundaries of the former Italian colonies". Illustrative sketch maps were annexed, one of which concerned Libya's boundaries. Map No. 87 is a reproduction of the annexed map "Libya: Sketch Map of Frontiers", identified as Map No. 241, United Nations, January 1950. The southern boundary is shown, east of Toummo, as a dashed line with question marks. The course of the line on the map is certainly not that of the 1919 Anglo-French Convention and is closer to the 1935 Treaty line, although it appears not to be identical to it.

5.378 As to Libya's boundary with Tunisia, the Study stated that the boundary was fixed by the Franco-Ottoman Convention of 1910[442], and that no claims or questions had been raised with regard to it. Libya's boundary on the east with Sudan was dealt with in much the same way since it, too, had been fixed by international agreement. As to the "southern part of the western frontier and southwestern frontier (with Algiers and French West Africa)", the Study said that this frontier was fixed by an exchange of notes between Italy and France on 12 September 1919, rectifying the former boundary "somewhat in Libya's favour", and that, here too, no claims or questions had been raised. From this it would appear either that France had decided to drop its 1948 proposal[443], or that the

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[439] There was no further mention by France, at that time, of its 1948 proposal, which clearly involved boundary adjustment.

[440] Pelt, op. cit., p. 420.

[441] Pelt, op. cit.

[442] See, para. 5.111, et seq., above.

[443] See, para. 5.365, et seq., above.

Secretariat was unaware of the proposal[444]. As will be seen further on, however, a French proposal for rectifying this 1919 boundary was to be tabled again shortly.

5.379 The Study then moved to the "southern frontier (with French West Africa and French Equatorial Africa)". Its conclusions are quoted in full below since what was said gave rise to a controversy. The Study said:

> "This frontier was fixed by the so-called "Rome Agreement" of 7 January 1935, between France and Italy. However, the French delegation, in a notation on a map attached to the report of the Four Power Commission of Inquiry regarding Libya, has pointed out that this Agreement never came into force as it was never ratified, and that it furthermore was formally denounced by the Italian Government in 1938. The boundary in question is, therefore, according to this French notation, still governed by the "Franco-Italian Protocol for the delimitation of the frontier between Libya on the one hand, and French West Africa on the other hand, which was signed on 10 January 1924 and which remains in force". The Protocol is not to be found in any collection of treaties nor is any allusion to its existence to be found in standard reference books or in articles on Libya...[445]."

5.380 Before examining this comment in greater depth, it remains to be mentioned that the Study then set out in some detail the Egyptian claims on the east and the basis advanced for them. It reported, however, that Egypt regarded its claims to have been made in the context of proposals for separate trusteeships for Libya, but that now Egypt felt that "it was in a position to negotiate similar frontier adjustments in a friendly spirit of friendship and mutual co-operation with a sister nation, the independent Libya of the future".

5.381 To revert to Libya's southern boundary, the Secretariat's Study in the passage quoted above referred to a notation on a map attached to the Report of the Four Power Commission. Two versions of this map and notes have been reproduced here. Map No. 88 is a copy of the map attached to the Commission's Report. Map No. 89 is a map attached to the version of the Report published by the French Government. A third map, Map No. 90, is a French map furnished to the Commission. There were two notes to the map of the Commission (Map No. 88). The first appears to be a note of the Commission itself, which reads:

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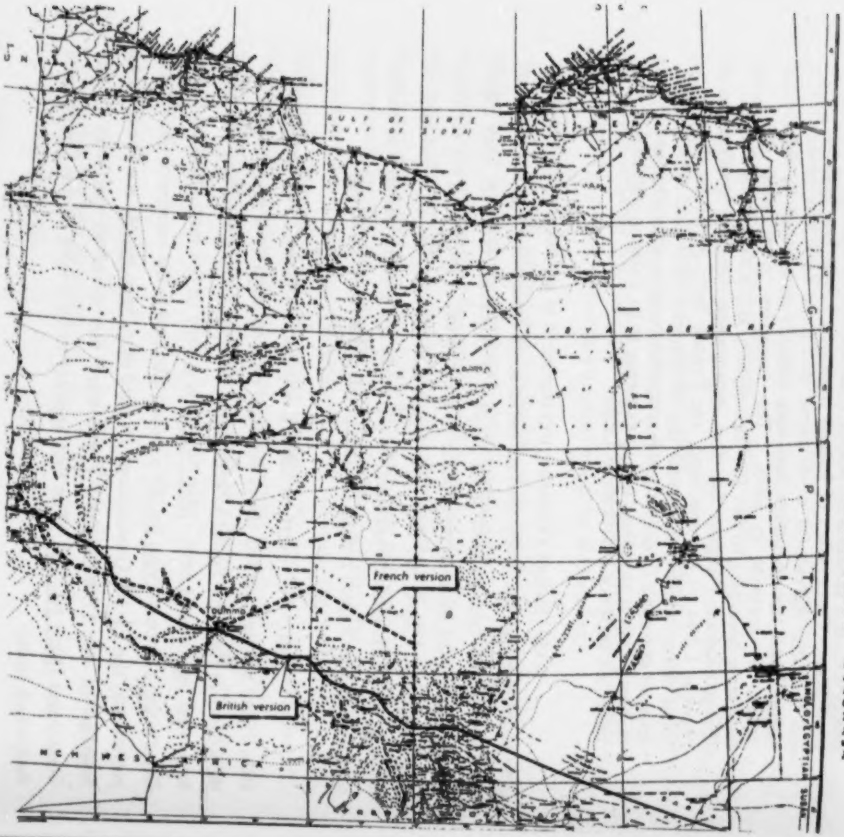
[444] As will be seen, at para. 5.390 below, the claim to adjust the Libyan-Algerian boundary was resurrected later in the year by France.

[445] United Nations Document A/AC.18/103/ op. cit., p. 5. Exhibit 62.

Map No. 88



NOTE

This map is a reproduction of the British Ordnance map made in accordance with the map printed by the Italian Ministry of Colonies in 1937.

The southern frontier of the Fezzan according to this British Ordnance map is shown by the dotted line thus:

— · — · — · — · — · — · — · — · —

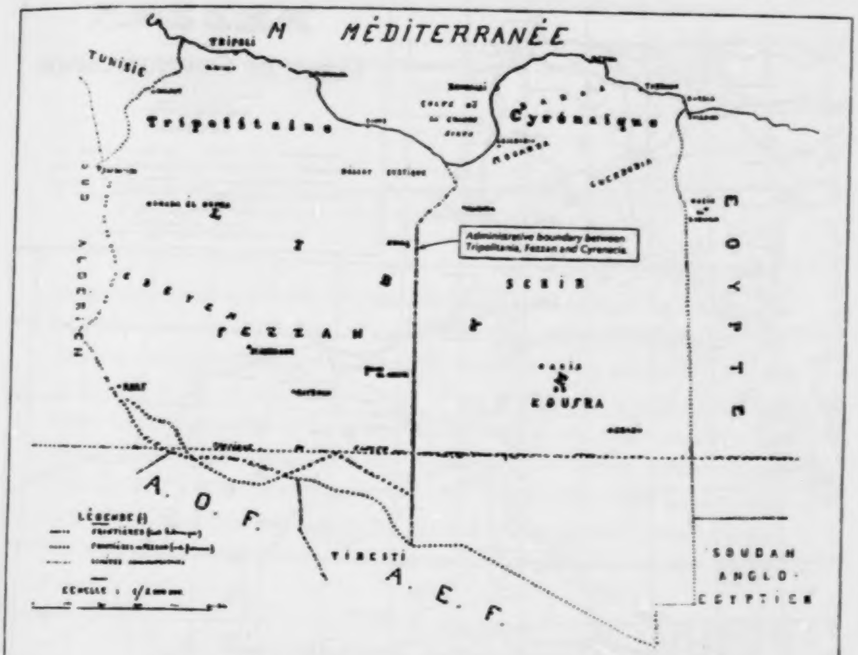
According to the French map printed by the Gouvernement général de l'Algérie in February 1948, the frontier runs along a line which has been approximately represented on this map, thus:

· ·

Note by the French Delegation. *The frontier shown on the map printed by the Gouvernement général de l'Algérie is in accordance with the Franco-Italian protocol for the delimitation of the boundary between Libya, on the one hand and French West Africa and French Equatorial Africa, on the other hand, which was signed on the 10th of January 1924 and which remains in force.*

The frontier shown on the British Ordnance map is based on an agreement concluded between the French Government and the Italian Government on January 7th, 1935. This agreement never came into force as it was never ratified and was formally denounced by the Italian Government in 1938.

Map No. 89



N. B. — La carte ci-contre a été tracée d'après celle qui figure dans le rapport, laquelle est une reproduction de la carte d'Etat-Major britannique établie elle-même suivant celle que fit dresser en 1937 le Ministère italien des Colonies.

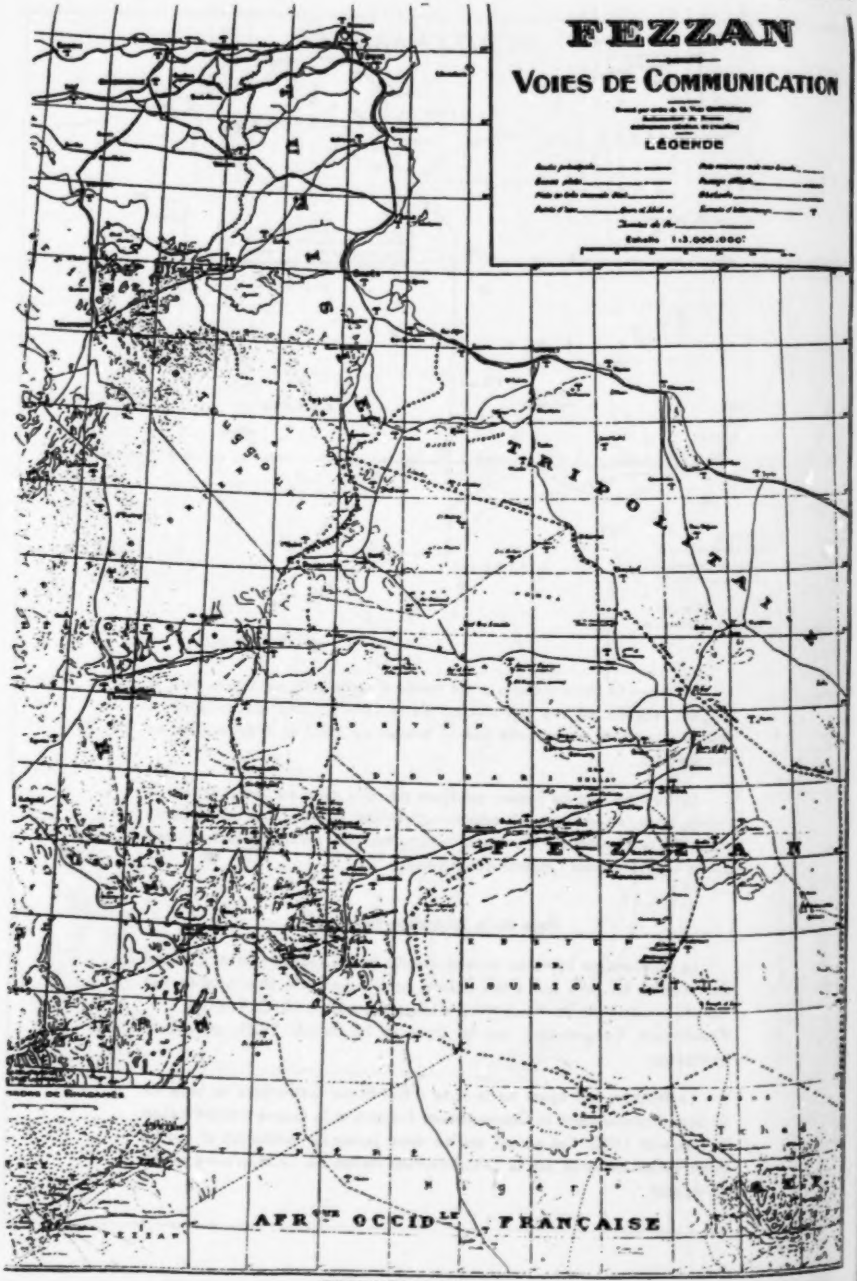
La frontière sud du Fezzan qui figure sur cette carte est contestée par la France. Aussi, a-t-on reproduit approximativement, tout au long de la partie contestée, la frontière qui figure dans la carte française établie en février 1948 par le Gouvernement Général de l'Algérie.

Note de la délégation française

La frontière qui figure sur la carte établie par le Gouvernement Général de l'Algérie est celle qui a été définie par le protocole franco-italien qui règle la question des frontières entre la Libye d'une part, l'A. O. F. et l'A. E. F. d'autre part. Ce protocole, qui fut signé le 10 janvier 1924, est encore en vigueur.

La frontière qui figure sur la carte d'Etat-Major britannique se base sur un accord conclu entre le Gouvernement Français et le Gouvernement Italien le 7 janvier 1935. Cet accord, qui ne reçut jamais de ratification et qui fut formellement dénoncé par le Gouvernement Italien en 1938, n'entra jamais en vigueur.

Map No. 90


FEZZAN
VOIES DE COMMUNICATION
LÉGENDE
Échelle 1:3.000.000
TRIPOLITAINE
FEZZAN
AFR^{que} OCCID^{le} FRANÇAISE
Tchad

> "This map is a reproduction of the British Ordnance map made in accordance with the map printed by the Italian Ministry of Colonies in 1937.
>
> The southern frontier of Fezzan according to this British Ordnance map is shown by the dotted line thus:
>
> .-.-.-.-.-.-.-.-.-.-.
>
> According to the French map printed by the Gouvernement général de l'Algérie in February 1948, the frontier runs along a line which has been approximately represented on this map, thus:
>
> .... [446]."

These lines appear on the map (modified for purposes of clarity). As can be seen, the French version of the line only runs from Ghat, through Toummo, to the Tropic of Cancer and then southeast to 18°E longitude, where it stops[447]. It does not appear to be an accurate rendition of the line agreed between Italy and France in the Accord of 12 September 1919, which in any event projected the agreed boundary no further east than Toummo. The British version of the boundary appears to be similar to the 1935 Treaty line. The French map furnished to the Commission (Map No. 90) is of interest since it indicates where the boundary between Libya and Algeria lay in the view of the French Government at the time.

5.382 The note added to the commision's map by the French delegation reads as follows:

> "Note by the French Delegation
>
> The Frontier shown on the map printed by the Gouvernement général d'Algérie is in accordance with the Franco-Italian protocol for the delimitation of the boundary between Libya, on the one hand and French West Africa and French Equatorial Africa, on the other hand, which was signed on the 10th of January 1924 and which remains in force.
>
> The frontier shown on the British Ordnance map is based on an agreement concluded between the French Government and the Italian Government on January 7th, 1935. This agreement never

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[446] The map attached to the Report appears as Exhibit 63.

[447] It stops there for a good reason: 18°E longitude marked the east/west boundary between Fezzan and Cyrenaica; and where the boundary was to the east of that line concerned the hinterland of Cyrenaica and, hence, was a matter of concern to the British, not the French.

> came into force as it was never ratified and was formally denounced by the Italian Government in 1938[448]."

The problem with the French note is that there was no Franco-Italian protocol of 10 January 1924. There was a Franco-Italian Accord of 12 September 1919, which revised the boundary as far east as Toummo; and there was a Protocol of 10 January 1924, the same date as the reference, but it concerned the delimitation of the first sector of the 1899 Declaration line on the east, which the Protocol extended north along 24°E longitude to 19°30'N latitude as a result of the Anglo-French Convention of 8 September 1919[449]. The French delegation had obviously made a mistaken reference - the sort of thing readily understandable in such a complex situation. In the circumstances, it would appear that the analysis in the Secretariat's Study was the best that could have been made in the circumstances. The Secretariat's view as to the southern frontier of Libya was depicted on the annexed sketch map (Map No. 87), showing a dashed line with question marks east of Toummo. As will be noted further on, the French Government soon acted to correct their mistake.

5.383 After commenting on the matter of existing international agreements regarding the boundaries of the former Italian colonies, the Secretariat's Study then addressed the question of the competence of the General Assembly to decide on international frontiers. The Study summarized the detailed discussion of this question during meetings of Subcommittee 17 over three days in October 1949, and at a subsequent meeting of the First Committee, and concluded as follows:

- That the view generally held was that the General Assembly had no competence under the Charter to delimit or adjust international frontiers;
- That it was generally agreed that there was a distinction to be made between the competence to delimit and the competence to adjust a boundary;

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[448] Ibid.

[449] See, para. 5.215, et seq., above.

- That there was a division of opinion over whether Annex XI of the Italian Peace Treaty had referred to the General Assembly the question of boundary adjustments; and

- That the U.S. and French representatives felt that the General Assembly's competence to delimit was inherent in its authority to dispose of the Italian colonies, whereas the representative of several other States had doubts, the Soviet Union suggesting that the problem need not be dealt with by the General Assembly since most boundaries had already been fixed by international agreement and that any further delimitation "could be and ought to be left to the parties concerned".

5.384 The Secretariat's Study then turned to the procedures that had been suggested be followed at the Fourth Session for "settling the question of the boundaries". Three alternatives had been discussed: (i) to establish a boundary commission; (ii) to refer the matter (specifically concerning the Egypt-Libya frontier) to the U.N. Commissioner and Council; (iii) to leave boundary questions to be resolved by direct negotiations between the States concerned. The last proposal seemed to have the most support; but the First Committee took no decision and recommended that the question be referred to the Interim Committee for study.

5.385 The Study summarized the five boundary questions that had arisen or been raised, two of which concerned Libya. As to Libya's eastern frontier with Egypt, the Study said this:

> "The Interim Committee will have to determine whether the Agreement of 6 December 1925 between Egypt and Italy fixed the boundary in the sense of the General Assembly resolution, and if not, to study the procedure for delimiting this boundary."

The agreement referred to is the Italo-Egyptian Accord of 6 December 1925[450]. The Secretariat did not elaborate on what was meant by a boundary being fixed "in the sense of Resolution 289 (IV)". As to the southern boundary of Libya, the Study said:

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[450] See, para. 5.218, et seq., above.

> "It is not clear whether and to what extent this frontier has been delimited or demarcated. Further information will be required to enable the Interim Committee to determine whether the frontier is fixed in the sense of the General Assembly resolution, and if not, to study the procedure for its delimitation."

So the Study suggested that the Interim Committee had, first, to deal with whether the boundary (or frontier) had been fixed "in the sense of Resolution 289 (IV)", and if not, second, to study the procedure for its delimitation.

5.386 On 7 February 1950, the Interim Committee took up the question of boundaries in the light of the Secretariat's Study but deferred it until its 15 September meeting. At that meeting the United States tabled a draft resolution, the pertinent portion of which read as follows:

> "That the portion of its boundary with French territory not already fixed by international agreement be delimited, upon Libya's achievement of independence, by negotiation between the Libyan and French Governments, assisted upon the request of either party by a third person to be selected by them or, failing their agreement, to be appointed by the Secretary-General of the United Nations[451]."

In part due to lack of time, no agreement was reached on the U.S. resolution, but the Committee decided to append it to its report to the Fifth Session[452]. However, at the same meeting of the Interim Committee the French representative stated that -

> "... his government reserved the right to put before the Assembly at the proper time the question of the delimitation of the boundaries of its territories and of Libya. The French Government had not thought it necessary to ask for the inclusion of this question as a separate item in the provisional agenda of the fifth regular session of the General Assembly because item 21 (f) of that agenda covered all the specific cases of delimitation of the boundaries of the former Italian colonies. Consequently, the French delegation would state its views on the question when the Assembly considered item 21 (f).[453]"

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[451] United Nations, Official Records of the Third Session of the General Assembly, Interim Committee, 1950. A/AC.18/118/Rev. 1, 15 September 1950, U.S.A.: Draft Resolution, p. 2. (A copy of this page is attached as Exhibit 64.)

[452] United Nations, Official Records of the Fifth Session of the General Assembly, 1950, Suppl. No. 14 (A/1388), Annex C.

[453] This quotation is taken from the official summary of the Committee's proceedings and not from a verbatim transcript. The same comment applies to other statements quoted in the succeeding paragraphs.

5.387 The Ad Hoc Political Committee then took up the boundary question in the light of the Interim Committee's report on 13 December 1950 at its 81st meeting. The United States tabled the resolution it had introduced at the 15 September session of the Interim Committee, modified to replace the phrase "not already fixed by international agreement" by the phrase "not already delimited by international agreement", a change which, according to Pelt[454], had the effect of "stressing once again the majority view that the General Assembly should not itself adjust or rectify frontiers". Of course the change also reemphasized that the draft resolution of the United States was not intended to apply to the adjustment or rectification of existing Libyan boundaries but to the situation where there was no conventional boundary between Libya and French territory and hence where the delimitation of a boundary in the area remained to be negotiated between Libya and France.

5.388 This distinction was well understood by Mr. Naudy, France's delegate to the Ad Hoc Political Committee, for at this session he stressed the need to distinguish between -

> "... the concept of delimiting a boundary by international agreement, that of a demarcation on the spot of a boundary already fixed by convention, and that of rectification of a boundary, in view of paragraphs 2 and 3 of Annex XI of the Peace Treaty with Italy."

The French delegate went on to express the regret of his delegation that the Interim Committee had failed to shed more light on the subject, particularly as to the competence of the General Assembly to make rectifications in boundaries, a competence which the French delegation considered the General Assembly to have. As Pelt pointed out, this was not the majority view[455].

5.389 At the outset of this meeting of the Ad Hoc Political Committee, the U.S. representative explained why the United States had tabled the resolution. She (Mrs. Sampson) explained that although thinly-populated, desert areas might be involved, "the interests of the local population required that the task should be carried out equitably". It was such a long and difficult task that it seemed best not to saddle the General Assembly with such a responsibility. That was why, she said -

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[454] Pelt, op. cit., p. 426. (A copy of this page is attached as Exhibit 61.)

[455] Ibid.

> "... that boundaries which had not yet been delimited should be delimited by negotiations between the States concerned."

And Mrs. Sampson added that her delegation -

> "... emphasized that the contemplated procedure was applicable only to the delimitation of the boundaries and not to their rectification."

Although the response of the French representative to the U.S. proposal was not enthusiastic, and included the statement quoted above as to the various distinctions to be made in respect to the terms relating to boundaries, he ended up by saying that "his delegation could therefore see no major objection to the adoption of the draft resolution".

5.390 The French representative then proceeded to present a claim for rectification of the frontier between Libya and Algeria in the region of Ghat and Serdeles as well as to correct the mistake made earlier by the French delegation[456].

5.391 The proposed rectification was based on the alleged, repeatedly-expressed wishes of one of the Tuareg tribes in this region (the Azghar tribe) to be reunited with kinsmen in the Djanet region of Algeria. The French delegate set out certain claimed evidence in support of this claim, adding the following:

> "In any case his delegation wished to inform the Committee that his government reserved the right to settle the question in a friendly spirit by direct negotiation with the Libyan Government; it would follow the same procedure to solve all similar problems of boundary rectification which might arise in connexion with the former Italian colonies."

As can be seen, the French delegation made clear that the Algerian boundary question concerned rectification - as was certainly the case. It was equally clear that it fell outside the scope of the draft U.S. resolution, which concerned delimitation. Such a fine distinction had, in fact, been introduced into the discussions by the French delegation itself.

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[456] See, para. 5.386, above.

5.392 Then the French representative proceeded to correct what he termed "a mistake which appeared to have found its way" into the Secretariat Study, which is mentioned above in paragraph 5.382. He did so in the following statement:

> "The truth was that the provisions of the Franco-Italian Agreement of 7 January 1935 fixing the boundary of Libya with French West Africa (later Toummo) and with French Equatorial Africa had never come into force, since that agreement had not been ratified and the Italian Government had denounced it on 27 December 1938.
>
> In those circumstances reference should be made to previous provisions fixing that section of the boundary. Those were contained in the Franco-Italian Agreement of 1 November 1902, since the Agreement of 12 September 1919 dealt only with the boundary between Ghadamès and Toummo. According to the Agreement of 1902, the boundary in question was the boundary of Tripolitania indicated in the map annexed to the Additional Statement of 21 March 1899 to the Franco-British Convention of 14 June 1898. That Additional Statement had been completed by a supplementary Franco-British Convention signed on 8 September 1919 and by a Franco-British Declaration of 21 January 1924 relating to a protocol of 10 January of the same year. The matter was therefore governed at present by all the texts he had just quoted."

5.393 The U.S. draft resolution was then put to a vote and adopted by the Committee. Two days later, on 15 December 1950, the resolution was adopted by the General Assembly, during its Fifth Session, as Resolution 392 (V). The text of the pertinent part of the Resolution as adopted is as follows:

> "That the portion of its boundary with French territory not already delimited by international agreement be delimited, upon Libya's achievement of independence, by negotiation between the Libyan and French Governments, assisted on the request of either party by a third person to be selected by them or, failing their agreement, to be appointed by the Secretary General[457]."

5.394 If the French Government had believed that the boundary between Libya and French West Africa and French Equatorial Africa was already delimited by the agreements mentioned in the French representative's corrective statement, France's representative at the United Nations would certainly have been obliged to object to the U.S. resolution both in Committee and before the General Assembly, or at the very least to qualify France's vote in favour of it. For there was, according to the French thesis developed over the years, no Libyan southern boundary to delimit: the boundary had already been delimited, according to this thesis, by the agreements referred to by the French representative. And the Algerian sector of the boundary clearly involved boundary rectification, which the Resolution did not embrace. Furthermore, in his corrective statement the French representative was notably unassertive, if not ambiguous. All he said was that the "matter was therefore governed at present by all the texts" referred to by him. If the French Government had believed these agreements resulted in the southern boundary of Libya being delimited, it was incumbent on its representative to say so at this very critical moment[458]. No such statement appears on the record.

---

[457] Resolution 392 (V) of 15 December 1950, United Nations, Official Records of the Fifth Session of the General Assembly, Supplement No. 20 (A/173), 1950. Exhibit 2.

5.395 There are two other points to be made before moving on. The French representative had corrected the erroneous reference made earlier by his delegation before Resolution 392 (V) was adopted. Thus, before the vote was taken - both in Committee and before the General Assembly -, France had cleared up the mistake, and the other delegations voted in the full light of France's correction of the record. However, in correcting the record, the French Government, in the statement of its representative quoted from in paragraph 5.392 above, once more falsely stated that a map had been annexed to the 1899 Declaration.

5.396 From that time until Libya's independence, there are only a few other matters that deserve mention here. On 17 November 1950, in the light of the First Annual Report of the United Nations Commission in Libya and the reports of the Administering Powers, Resolution 387 (V) was adopted reaffirming Resolution 289(A) (IV), and calling for the establishment of a Provisional Government by 1 April 1951. This was followed by Resolution 515 (VI) of 1 February 1952, after the establishment of the United Kingdom of Libya as an independent and sovereign State on 24 December 1951, in which the General Assembly stated that it:

---

[458] The boundary rectification claims of Egypt were ultimately dealt with in a General Assembly resolution adopted on 28 January 1952, which recognized Egypt's intent to enter into negotiations with Libya.

> "Considers, since the United Kingdom of Libya had been established as an independent and sovereign State and has applied for membership in the United Nations, that it should now be admitted to the United Nations in accordance with Article 4 of the Charter and the General Assembly's previous recommendations on the subject[459]."

5.397 The Constitution of the United Kingdom of Libya promulgated on 7 October 1951 contained a provision as to the boundaries of Libya. This was Article 4, which provided:

> "The boundaries of the United Kingdom of Libya are: On the north, the Mediterranean Sea; On the east, the boundaries of the Kingdom of Egypt and of the Anglo-Egyptian Sudan; On the south, the Anglo-Egyptian Sudan, French Equatorial Africa, French West Africa and the Algerian Desert; On the west, the boundaries of Tunisia and Algeria[460]."

It will be noted that the eastern and western boundaries are identified as the "boundaries" with the neighbouring State or French territory. The northern boundary, with the Mediterranean, and the southern boundary are not so described. This is an indication that at the time of its independence Libya regarded that in the south its boundary remained to be delimited, thus reaffirming the same conclusion reached by the General Assembly in adopting Resolution 392 (V).

CHAPTER II. FROM 1952 TO 1990

5.398 The period covered by this Chapter, which extends from Libyan independence in 1951 to the notification of the Accord-Cadre to the Court in 1990, was filled with major events for Libya and Chad; but, in large part they were events having no direct bearing on this case. Events subsequent to Libya's independence in 1951 might have been relevant in resolving the present dispute had they altered the situation that prevailed in 1951: if a subsequent agreement had established a boundary east of Toummo, or if either Libya or Chad had acquiesced in the fixing of such a boundary. Neither situation occurred in this period. What the events and the conduct of the Parties during this period do demonstrate is the absence of such a boundary.

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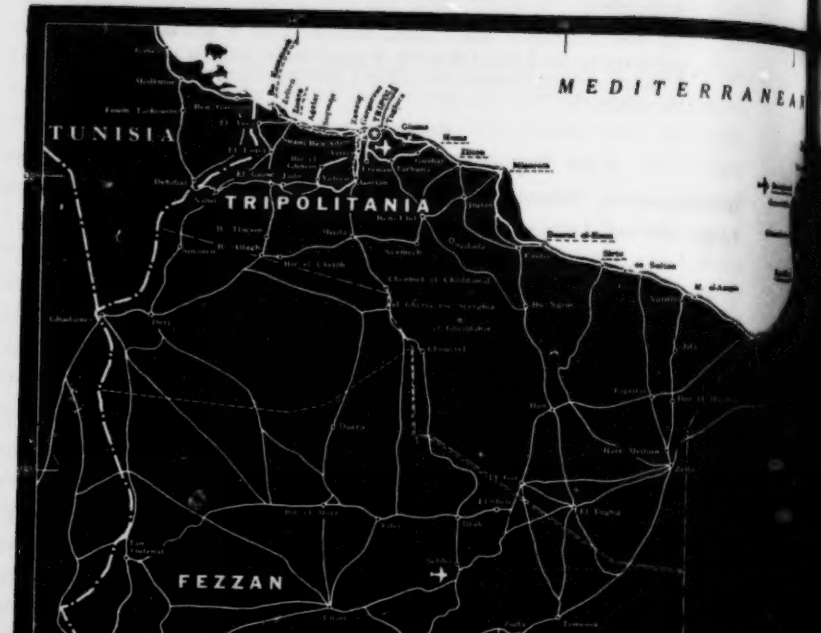
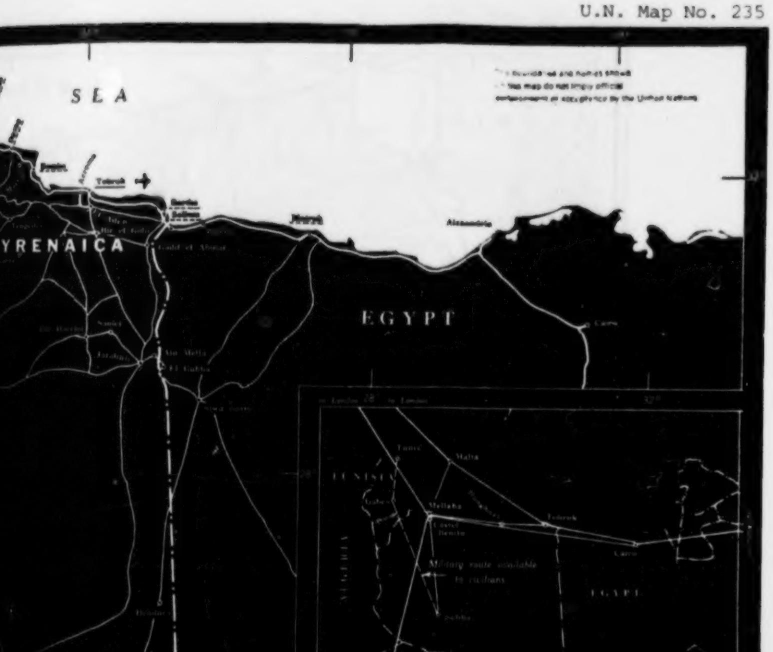
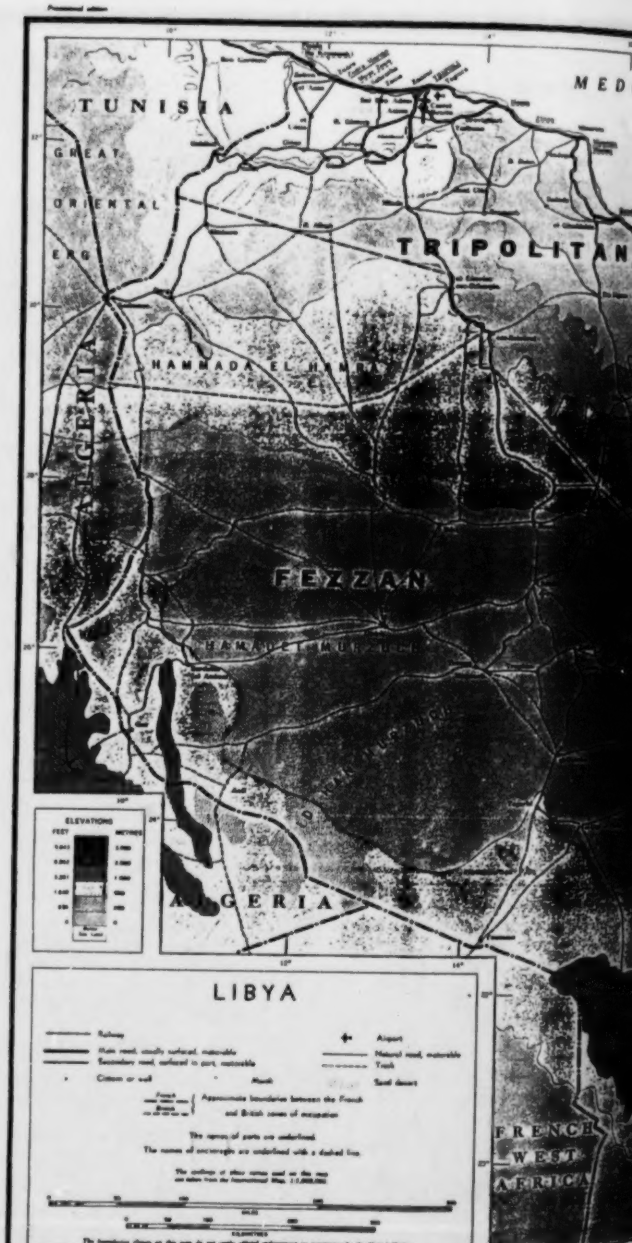
[459] Res. 515 (VI), 1 February 1952, as appears in Pelt, op. cit., Annex I, p. 900-901. Exhibit 65.

[460] A copy of the Constitution is attached as Exhibit 3.

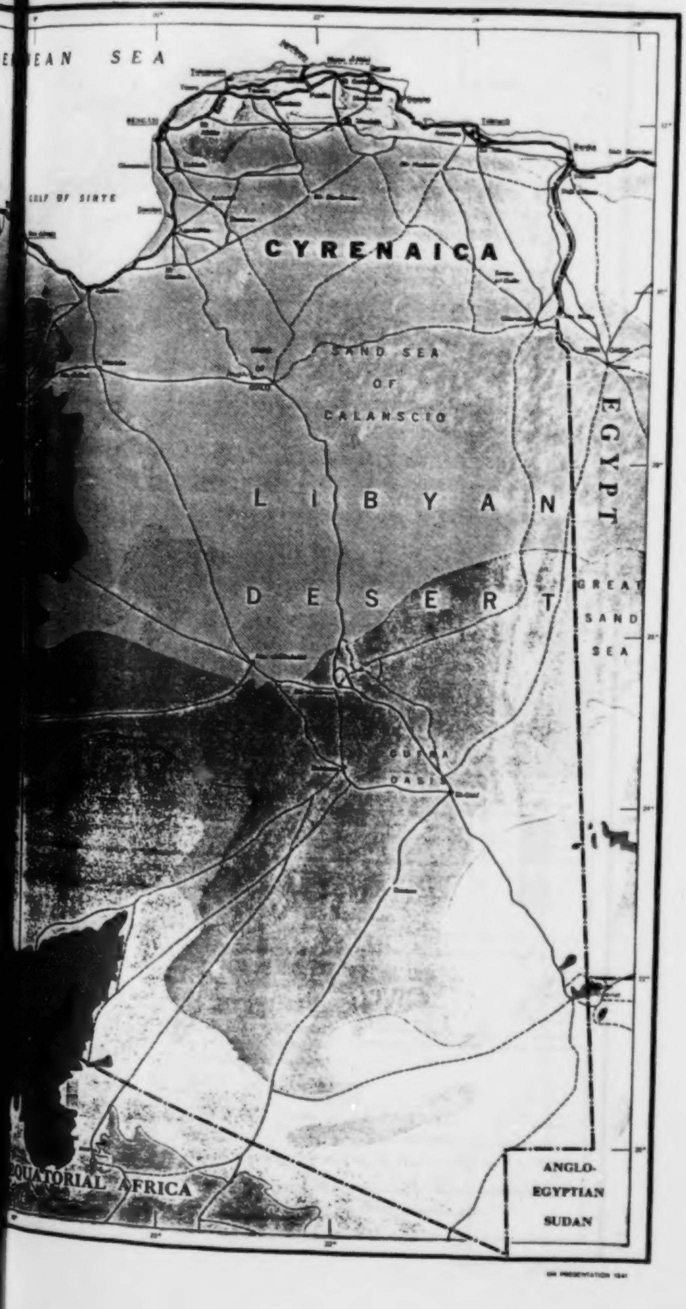

MEDITERRANEAN
TUNISIA
TRIPOLITANIA
FEZZAN
ALGERIA
FRENCH WEST AFRICA
FRENCH EQUA
AFRICA
20°
12°
MAP NO. 235
DECEMBER 1949
UNITED NATIONS

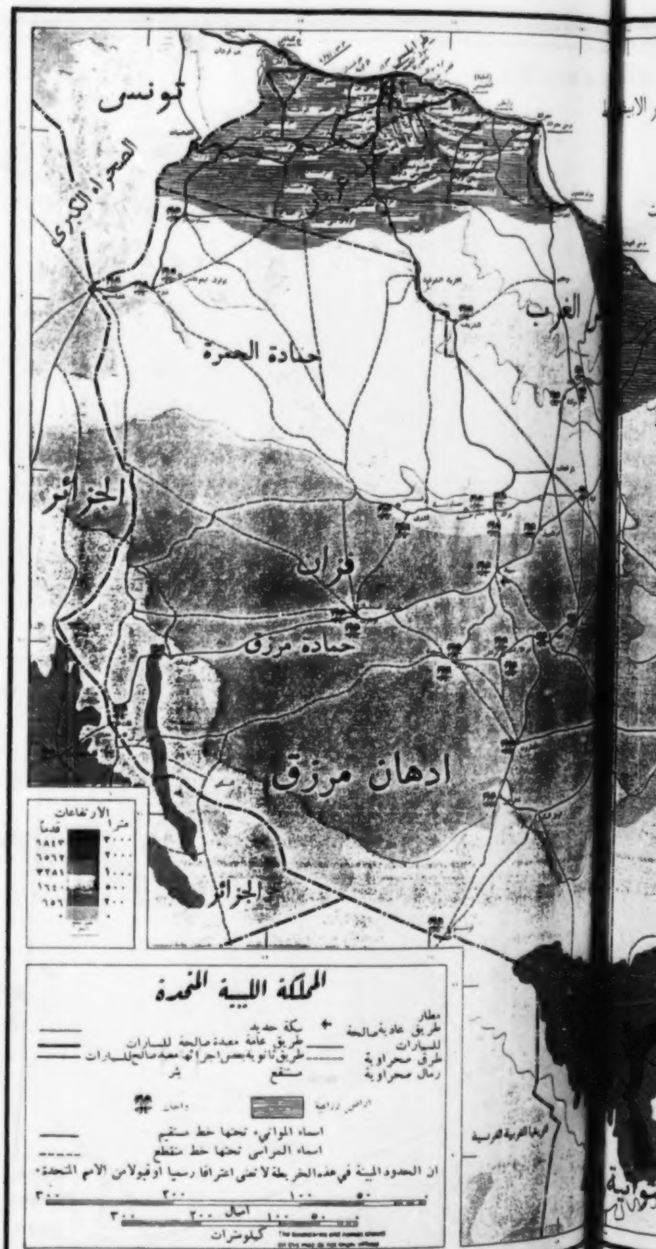
U.N. Map No. 235


SEA
The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations
Tobruk
Bardia
Alexandria
CYRENAICA
EGYPT
Cairo
ANGLO-EGYPTIAN SUDAN
Tunis
Malta
TUNISIA
Mellaha
Military route available to civilians
EGYPT
ANGLO-EGYPTIAN SUDAN
FRENCH WEST AFRICA
NIGERIA
AIR ROUTES AND AIR FIELDS
0 200 400 600
MILES
0 200 400 600
KILOMETRES
LIBYA
PRINCIPAL TRANSPORT ROUTES
Main road
Railway
Selected secondary roads
Airfields
Approximate British boundary between Tripolitania and Fezzan
Approximate French boundary between Tripolitania and Fezzan
The names of ports are underlined.
The names of mouillages are underlined with a dashed line.
0 40 80 120 160 200
MILES
0 40 80 120 160 200
KILOMETRES
24°
UN PRESENTATION 1513


Provisional edition
TUNISIA
GREAT ORIENTAL ERG
MED
TRIPOLITAN
ALGERIA
HAMMADA EL HAMRA
FEZZAN
HAMADET MURZUCH
ALGERIA
FRENCH WEST AFRICA
ELEVATIONS
FEET
METRES
Below Sea Level
LIBYA
Railway
Main road, usually surfaced, motorable
Secondary road, surfaced in part, motorable
Cistern or well
Marsh
Airport
Natural road, motorable
Track
Sand desert
French
British
Approximate boundaries between the French and British zones of occupation
The names of ports are underlined.
The names of anchorages are underlined with a dashed line.
MILES
KILOMETRES
The boundaries shown on this map do not imply official endorsement or acceptance by the United Nations.
UNITED NATIONS
UN MAP COLLECTION
FILE COPY

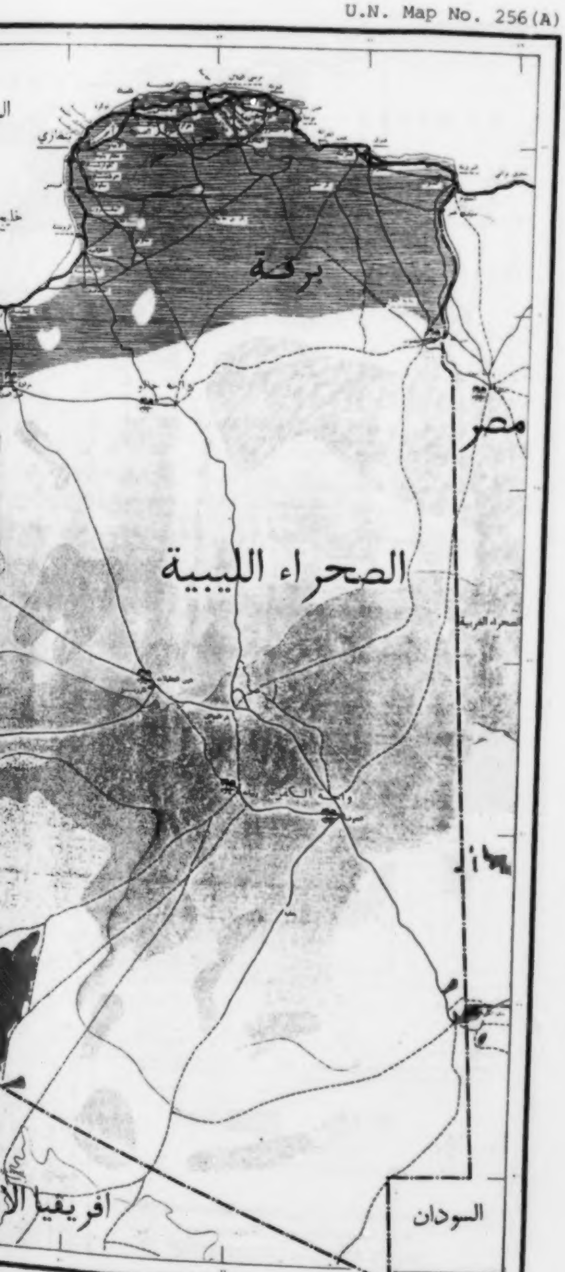
U.N. Map No. 256


EAN SEA
GULF OF SIRTE
CYRENAICA
SAND SEA OF CALANSCIO
LIBYAN DESERT
EGYPT
GREAT SAND SEA
CUFRA OASIS
EQUATORIAL AFRICA
ANGLO-EGYPTIAN SUDAN

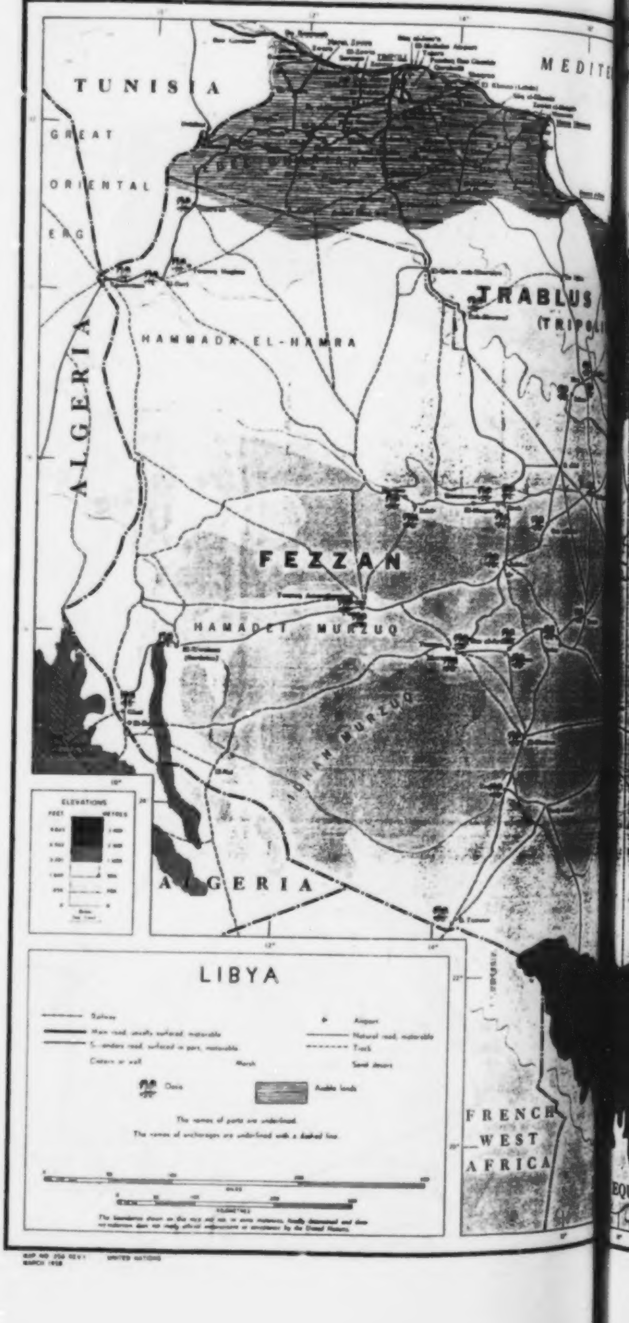

تونس
الصحراء الكبرى
حمادة الحمرة
الجزائر
فزان
حمادة مرزق
ادهان مرزق
الجزائر
الارتفاعات
مترا
قدماً
المملكة الليبية المتحدة
مطار
سكة حديد
طريق عامة معبدة صالحة للسيارات
طريق ثانوية بعض اجزائها معبدة صالح للسيارات
مستنقع
بئر
طريق عادية صالحة للسيارات
طرق صحراوية
رمال صحراوية
واحات
اراضي زراعية
اسماء الموانىء تحتها خط مستقيم
اسماء المراسى تحتها خط متقطع
ان الحدود المبينة في هذه الخريطة لا تعني اعترافا رسميا او قبولا من الامم المتحدة.
٣٠٠ ٢٠٠ ١٠٠ ٥٠ ٠
اميال
٣٠٠ ٢٠٠ ١٠٠ ٥٠ ٠
كيلومترات
The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations

MAP NO. 256 (A) UNITED NATIONS
NOVEMBER 1950

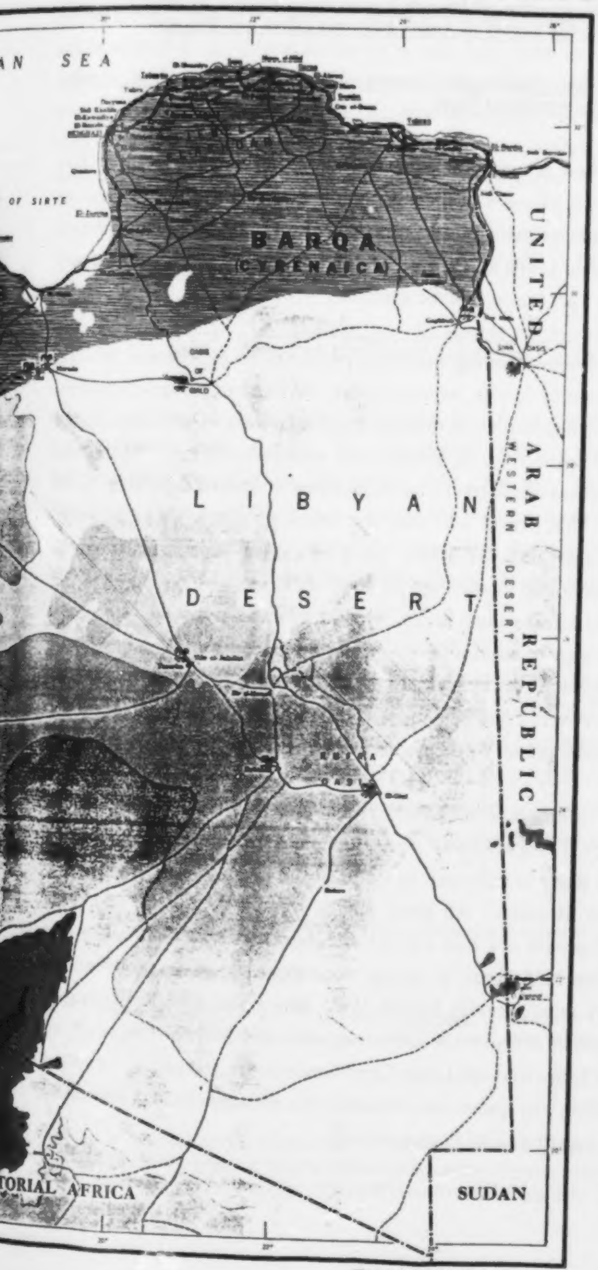
U.N. Map No. 256(A)



E 142/0/1955


TUNISIA
GREAT ORIENTAL ERG
ALGERIA
HAMMADA EL-HAMRA
TRABLUS (TRIPOLI
MEDITE
FEZZAN
HAMADET MURZUQ
MURZUQ
ALGERIA
FRENCH WEST AFRICA
ELEVATIONS
FEET
METRES
LIBYA
Railway
Main road, usually surfaced, motorable
Secondary road, surfaced in part, motorable
Cistern or well
Marsh
Sand dunes
Airport
Natural road, motorable
Track
Oasis
Arable lands
The names of ports are underlined.
The names of anchorages are underlined with a dashed line.
MILES
KILOMETRES
UNITED NATIONS

U.N. Map No. 256, Rev. 1



E142/0/1958

SECTION 1. The Events Between Libya's Independence in 1951 and the Evacuation of French Forces from Fezzan in 1956 Pursuant to the Treaty of Amity Between Libya and France

(a) The Conditions Facing Libya in 1951 as a Newly-Independent State

5.399 Few States have experienced, within so short a time after achieving independence, changes in their economic and political life as great as occurred in Libya within a relatively few years of 1951. It is, thus, easy to overlook the conditions that faced Libya at the time its independence was proclaimed and to think only of Libya's present economic situation.

5.400 Overshadowing this early period of its history was the fact that Libya was occupied by foreign military forces. As one of the world's poorest nations, it was entirely dependent on those occupying powers - Great Britain, the United States and France - for economic and material support. Moreover, Libya's independence was declared at a tense moment in world affairs. The "Cold War" had started. This period also saw the development of movements to emancipate the people and territories of Africa and Asia from colonial domination. The Bandoeng Conference of April 1955 marked the entry of the "Third World" on the international scene, with its three leaders: Nasser, Nehru and Tito, and its ideology of neutralism in international relations. The new State of Libya, itself the result of decolonization, could not have remained unaffected by these events. Moreover, it had neighbourly ties to the Egypt of Nasser; and the two States were bound together by their common Arab heritage.

5.401 France's relations with the Arab world were at a low ebb at the time; accordingly, France viewed with great concern its position in Libya, which it regarded as likely to influence its status in the neighbouring countries of Tunisia, Algeria and Morocco. All these factors directly influenced the post-independence development of Libya and the circumstances in which France and Libya entered into the 1955 Treaty of Amity. Questions concerning the location and status of Libya's frontiers with French West Africa and French Equatorial Africa were not at all, in 1951, on the Libyan agenda; and France was occupying the southern part of Libya and the Libya-Chad borderlands and had no intention of leaving, thus making any questions of boundaries between French territories and Libya of minor importance to France as well.

5.402 The problems facing Libya were immense. It was not at all taken for granted by the occupying powers that Libya was going to be able to make a go of it. If France, at the time, may have been indifferent as to whether the Libyan experiment would work, nevertheless, France viewed with great alarm the prospect that Algeria might one day have Egypt as its neighbour. So the buffer provided by Libya was critical to French interests. John Wright has described the Libyan predicament in 1951 in these words:

> "In addition to its grave economic and social problems, the new state had to steer a passage between the Scylla of internal disunity and the Charybdis of foreign domination[461]".

(b) The Military and Economic Agreements with the United Kingdom, the United States and France

5.403 The United Kingdom and France entered into economic arrangements with Libya in December 1951, just before Libya's independence[462]. On 24 December 1951, the very day on which Libya's independence was proclaimed, a provisional military agreement between Libya and France was signed. It was for a renewable term of six months; and the agreement was thereafter renewed seven times. It provided the sole legal basis for France's troops to remain in Fezzan[463].

5.404 France had several reasons for wishing to remain in the southern part of Libya. They are well summarized by Pelt[464]. If the paramount factor, according to Pelt, was the French fear of the "chain reactions which might be triggered in the French Maghreb territories as a result of Libya's gaining its independence too quickly", there was also the presence of "a smell of oil in the Saharan air"[465]. There was the factor of national pride as well, for it was from the region of Lake Chad that General Leclerc had launched his Free French desert columns northward into Libya in World War II.

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[461] Wright: Libya, op. cit., p. 229. (A copy of this page is attached as Exhibit 59.)

[462] Pelt, op. cit., pp. 832-834.

[463] Lanne, op. cit., 1986, p. 200; see, also, Le Monde, 11 December 1954, article of Edouard Sablier. To Libya's knowledge, the text of this provisional military agreement was never published.

[464] Pelt, op. cit., pp. 833-834.

[465] It will be seen below that this "smell of oil" was a motivating factor behind the 1956 Agreement between Libya and France rectifying the Algerian boundary, an agreement on which the ratification of the 1955 agreement depended. See, para. 5.89, et seq., below.

5.405 There is no need to go into the military agreements in detail. They have no direct bearing on the present dispute, except that while France remained in the south of Libya and the borderlands the question of Libya's boundaries with the adjoining French territories was not of current concern.

5.406 In the light of Libya's strategic location, the United Kingdom, United States and French governments sought military alliances with Libya. The British were the first to obtain such an agreement[466]. This agreement, which combined elements of military, economic and material assistance, was referred to by U.S. Ambassador Villard in this way:

> "Libya signed a military agreement with Great Britain in 1953 despite an almost frantic effort by Egypt to prevent it. In any case, it would be difficult for Libya to become anti-Western, owing to its absolute dependence on the West for economic aid - which means its very existence[467]."

Negotiating an agreement with the United States took longer; it was not signed until September 1954, but it entitled U.S. forces to remain at the Wheelus airbase and at other bases until the end of 1970. In return, the United States undertook to pay Libya $42 million in various forms of assistance and to deliver $3 million worth of grain for immediate drought relief.

5.407 Ambassador Villard, who negotiated this agreement, subsequently wrote a book entitled Libya: The New Arab Kingdom of North Africa. It is a bitter commentary on the turn of events to note that, at the time, it was the United States that stood head and shoulders above the other Powers in espousing Libyan independence. But, then, Libya was one of the poorest nations on earth; and oil had not yet been discovered in commercial quantities.

5.408 At that bright moment in U.S.-Libyan relations, when Ambassador Villard wrote his book, a book that revealed an understanding and sympathetic interest in this new State, he included a map. The map showed the 1935 Franco-Italian Treaty line as the southern Libyan boundary - not the southeast line that emanated from the 1899-1919 Anglo-French agreements. This apparently reflected the view of the boundary question held by the U.S. Government at the time[468].

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[466] Agreement between Libya and the United Kingdom of 29 July 1953, International Accords and Agreements Annex, No. 27.

[467] Villard, H.S.: Libya: The New Arab Kingdom of North Africa, Ithaca, New York, Cornell University Press, 1956, p. 159. (A copy of this page is attached as Exhibit 66.)

5.409 The French Government was offended that the United Kingdom and the United States entered into military arrangements with Libya while France was left with only a six-month, mutually renewable military arrangement. As early as June 1952, the French Government had prepared and submitted to Libya a draft treaty of alliance and friendship. It had been based on the British model. This draft was the first step leading to the 1955 Treaty between Libya and France, which was to fall far short of the military alliance that France sought.

(c) The Treaty of Amity of 10 August 1955 Between Libya and France

5.410 The special circumstances in which the 1955 Treaty was concluded must be kept in mind in evaluating its provisions[469]. These circumstances included not only the prevailing international climate, but also the relationship that the two signatory States had to each other when Libya achieved independence, as well as the particular reasons each State had for wanting to conclude a treaty.

(i) Relations Between France and Libya, 1951-1955

5.411 Relations between Libya and France got off to a bad start. France had not been in favour of creating a new State, and this position had been made clear during the United Nations debates leading to Libyan independence.

5.412 To make matters worse, France considered that it had rights over the southern part of Libya where French forces were in occupation, and fully intended to continue to maintain a military presence there. France's attitude had a triple aspect: (i) a sentimental aspect, the result of the 1942 actions of the Free French units under General Leclerc[470]; (ii) an economic aspect, for mineral resources were hoped to exist there - and in particular oil; and (iii) a strategic aspect, for Fezzan and the Libya-Chad borderlands adjoined several French territories whose defense France had guaranteed[471].

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[468] Ibid., p. 3. The views concerning the Libyan boundaries later expressed by the Geographer of the U.S. State Department regrettably appear to have been more a reflection of the U.S. Government's changes in policy in respect to Libya rather than an impartial view of the boundary question.

[469] The Treaty's text may be found in International Accords and Agreements Annex, No. 28. The provisions of the Treaty are taken up below starting at para. 5.463.

5.413 Relations between Libya and France continued to deteriorate in the 1951-1955 period in the light of two other factors: first, developments affecting France's North African policy; second, Libya's situation in relation to the Arab countries.

5.414 In North Africa, the French Government had been confronted with mounting nationalist claims in Tunisia and Morocco since 1950.

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[470] In a report to the Assemblée de l'Union Française, setting out France's interests in Fezzan, Mr. Gorse said:

> "Ce bilan des intérêts français serait incomplet si nous ne mentionnions les liens sentimentaux qui unissent au Fezzan les anciens combattants des forces françaises libres .... Est-il besoin de rappeler dans quelles conditions s'effectua la conquête du Fezzan par les forces françaises libres, et de souligner le caractère glorieux de cette conquête? Le seul fait d'ouvrir un nouveau front, dans une zone d'accès aussi difficile, constituait un exploit et le rôle joué par les forces françaises libres, tant au Fezzan que sur les autres théâtres d'opérations en Libye, occupe encore une place importante dans l'esprit des anciens combattants de la dernière guerre." J.O.R.F. Documents, Assemblée de l'Union Française, Session de 1955, séance du 31 mars 1955, Annexe No. 111, p. 202. (A copy of this report is attached as A copy of this page is attached as Exhibit 67.)

[471] In an "avis" given on behalf of the Commission de la Défense de l'Assemblée de l'Union Française, M. Schneider underlined the strategic interest of Fezzan in the following terms:

> "Notre présence militaire au Fezzan nous permet d'assurer à moindres frais, par une couverture éloignée, la sécurité des frontières franco-libyennes du Sud-algérien, de l'Afrique occidentale et équatoriale. Cette occupation nous réserve en outre la possibilité d'une couverture indirecte de la Tunisie, à la poignée d'éventail des pistes reliant ces frontières à la Tripolitaine, permettant la surveillance de cette province et son occupation en cas d'agression venant de l'Est, qui nous obligerait à porter la défense de l'Afrique du Nord à hauteur du désert de Syrte.
>
> De plus, le Fezzan, par sa piste No. 5 et ses terrains d'aviation, constitue la base de manoeuvre la plus directe pour une intervention de nos forces d'Afrique du Nord, à hauteur du Tchad, pris en tenaille entre le Soudan anglo-égyptien, la Libye et la Nigéria, que Les Anglais s'apprêtent à évacuer.
>
> L'abandon de cette position clé, aux frontières mal définies, inverserait ces possibilités et rendrait extrêmement difficile la police du désert ... ." J.O.R.F. Documents, Assemblée de l'Union Française, session de 1955, séance du 12 mai 1955, Annexe No. 120, p. 214. (A copy of this page is attached as Exhibit 68.)

Tunisia's claims had been inscribed on the United Nations General Assembly's agenda in 1952. Above all, starting on the first of November 1954, France found itself faced with armed insurrection in Algeria. This quickly led to the Algerian war of independence. This matter, too, was inscribed on the United Nations agenda, in September 1955.

5.415 Libya hastened to support these movements toward independence in the Maghreb. Its support was consolidated when Libya joined the Arab League in March 1953. Following the revolution of July 1952 in Egypt and the coming to power of Nasser in 1954, the pressures of Arab nationalism that opposed the French policies in North Africa were openly supported and encouraged by Libya.

(ii) The Particular Circumstances Leading to the Conclusion of the 1955 Treaty

5.416 As mentioned above, the provisional military arrangement between Libya and France, which sanctioned the stationing of French troops in certain locations of southwest Libya, was signed on the very day of Libya's independence[472]. Renewed seven times, the last time being on 29 June 1954, this arrangement was to expire on 31 December 1954. However, since June 1952, the French Government had sought to replace this temporary arrangement with a definitive agreement, and had prepared and presented to the Libyan Government a proposed draft of a treaty of alliance and friendship based on the U.K. model.

5.417 France had initially sought to have the British and French negotiations take place in tandem. But this did not occur; and in March 1953 Libya separated the British negotiations, signing that agreement in July 1953. The United States then entered into negotiations with Libya, and this agreement was signed in September 1954. In the face of these developments, a new French draft was prepared and presented at the end of 1953. It proposed to replace the treaty of "alliance and friendship" with a treaty of "friendship and neighbourly relations", which included a package of arrangements comprised of financial, military, economic and cultural elements. The "neighbourly" aspect of the relationship arose from the fact that, at the time, Algeria was not a colony or possession of France but a part of metropolitan France. This fact resulted in the

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[472] At the time, the presence of French troops in Fezzan was the way this problem was referred to and it will be discussed below in these terms. However, French troops were also in the Libya-Chad borderlands.

Algerian boundary being by far the most important of the Libyan boundaries from the French standpoint.

5.418 In March 1954, Libya's Prime Minister made it known that it would not be possible for either the Cabinet or the Parliament of Libya to approve a military agreement with France that allowed maintaining of French forces in Fezzan. He proposed replacing the French draft with a technical agreement under which air bases in Libya would be leased to France[473].

5.419 Apparently, the French Government was prepared to accede to the Libyan view, for on 27 October 1954 a draft technical agreement along these lines was submitted to Libya. The French draft was once more rejected by the Libyan Government on 13 November 1954, which declared that it refused to negotiate an agreement that contemplated the maintenance of French forces in Fezzan. It was at that time that Libya made it clear that it did not intend to review the provisional agreement of 24 December 1951 and that it wished French forces to leave Fezzan. At the same time, the Libyan Government proposed to conclude with France an economic agreement, a cultural agreement and a good neighbour agreement.

5.420 The French Ministry of Foreign Affairs replied on 22 November 1954 to the Libyan note of 13 November. It took the position that the status quo was to be maintained in Fezzan unless, and until, altered by some other arrangement.

5.421 The negotiations took a new turn in December 1954 when Pierre Mendès-France[474] informed the Libyan Prime Minister that the French Government desired to open serious negotiations as soon as possible and that, sensitive to the legitimate aspirations of the Arab World, France sought to enter into a general, definitive agreement that would satisfy both sides. Having received assurances that these negotiations would have as their point of departure the evacuation of French troops from Fezzan, Prime Minister Ben Halim decided personally to lead the Libyan delegation.

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[473] This was confirmed during a meeting between the Libyan Prime Minister and the French Secretary General of Foreign Affairs in Paris on 26 June 1954.

[474] Président du Conseil and Ministre des Affaires Etrangères.

5.422 It was under these conditions that negotiations between Libya and France opened in Paris. They lasted from 3 to 6 January 1955 and were resumed in Tripoli starting on 18 July 1955. Before examining their course, it is necessary to focus on the aims of each party in the negotiations.

(iii) The Objectives of the Parties in the Negotiations

5.423 For Libya, the sine qua non of any treaty with France was the withdrawal of French forces from Fezzan; and there could be no departure from this principle without serious internal and international repercussions.

5.424 Internally, the Libyan Parliament had made it perfectly clear on several occasions during 1953 and 1954 that it was entirely out of the question to negotiate a permanent agreement with France that contemplated leaving French forces in Fezzan. The situation was reflected in a cable sent by the U.S. Ambassador in Tripoli to the U.S. State Department on 30 December 1954, which read, in part, as follows:

> "No Libyan Government could survive reaction Parliament and people against agreement for continued French occupation Fezzan[475]."

5.425 Externally, the Libyan Government was subject to heavy pressures from other Arab States, particularly Egypt, to secure the departure of French forces from Fezzan. Libya had had some difficulty in gaining the acceptance of Arab opinion over the U.K. and U.S. military arrangements. France was a different story: there could be no compromise in Arab eyes over the evacuation of Fezzan. This was, therefore, the overridding aim of Libya in the negotiations with France.

5.426 For France, the perspective was quite different, at least at the official level. France took the view that when the 1951 provisional military agreement was signed with Libya it had entered into a sort of pactum de contrahendo. An echo of this position may be found in the declaration made by Mendès-France to the Assemblée Nationale on 3 February 1955:

> "Nous n'avons pas cessé de rappeler au Gouvernement libyen depuis cette époque qu'en vertu de cette convention de décembre

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[475] See, U.S. Department of State incoming telegram (Control No. 12694) of 30 December 1954. (A copy of this document is attached as Exhibit 69.)

> 1951 à laquelle j'ai fait allusion, le Gouvernement libyen est tenu de conclure avec nous un accord définitif ...[476]."

5.427 Thus, there was a basic clash between the Libyan and French viewpoints over the principle of stationing French troops in Fezzan. This fact was later given recognition by M. Maurice Faure[477] during the debates over ratification of the 1955 Treaty, when he said:

> "Le seul engagement que la Libye avait contracté, c'était celui de négocier, mais bien évidemment la négociation a débouché sur ce qui était le point de rencontre entre la volonté libyenne et la volonté française, et ce point de rencontre n'a malheureusement pas été un traité d'alliance mais un traité d'amitié et de bon voisinage...[478]."

5.428 Nevertheless, once the Mendès-France Government was prepared at the end of 1954 to accommodate the Libyan point of view and to open up this principle for discussion, the negotiations were able to begin in earnest. But the French negotiators sought to obtain compensation as a result. The two areas where compensation was sought concerned, first of all, security, and, secondly, the matter of frontiers.

(iv) Compensation to France with Respect to Security

5.429 France sought in the first instance to obtain certain guarantees to take effect after the withdrawal of its troops from Fezzan. For France, the cornerstone of the negotiations concerning security rested on the dual principles of "non-substitution" and "reactivation". On the one hand, in time of peace, France did not want forces other than Libyan forces to replace the evacuated French troops. On the other hand, in time of war or international crisis, France wanted to be able to "reactivate" and hence to put back in use the bases in Fezzan that it had agreed to abandon.

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[476] J.O.R.F., Débats, Assemblée Nationale, 2ème séance du 3 février 1955, p. 687. Exhibit 70.

[477] M. Faure was at the time Secrétaire d'Etat aux affaires étrangères.

[478] J.O.R.F., Débats, Assemblée Nationale, 1ère séance du 22 novembre 1956, p. 5024. Exhibit 71.

5.430 It was to these guarantees that the head of the French Government referred in his statement of 3 February 1955 to the Assemblée Nationale:

> "La défense du Fezzan en temps de guerre nous concerne, en effet, au premier chef, étant donné la position stratégique occupée par cette région au centre même, non seulement de l'Afrique mais plus précisément de l'Afrique française. Des voies de communications aériennes et terrestres ont été organisées entre le Tchad et Tunis après la conquête du Fezzan sur les Italiens par la colonne Leclerc ... dans des conditions qui ont été justement rappelées hier. L'importance stratégique de ces voies de communications a été reconnue sur le plan international, notamment à la conférence de Dakar. Leur utilisation, leur organisation technique, leur sécurité ne peuvent pas être assurées sans la France qui doit donc rester présente sous une forme indéterminée à Ghat, Ghadamès et Sebha."

And the Président du Conseil added:

> "Je précise une nouvelle fois (...) qu'il ne saurait être question pour nous d'évacuer le Fezzan si nos intérêts légitimes, que je viens de définir dans leurs grandes lignes, ne sont pas satisfaits et si nous ne recevons pas les garanties que nous estimons indispensables pour notre sécurité[479]."

5.431 France sought more than this. It wanted facilities, as well. In particular, it wanted the free use of airstrips in Fezzan and recognition of France's right to use certain caravan routes that crossed Libya. In a report submitted by M. Gorse in March 1955 to the Assemblée de l'Union Française, the following point was emphasized:

> "Au nombre des garanties minima que l'on est en droit d'attendre d'une négociation figurent notamment: l'entretien permanent des aérodromes du Fezzan par des techniciens français, ces derniers pouvant être employés en qualité de fonctionnaires du Gouvernement libyen; le droit de transit sur certaines pistes dont l'usage a permis depuis la guerre de raccourcir considérablement nos communications (...).
>
> Il s'agit là, non de rectifications de frontières, mais de commodités pratiques destinées à épargner aux Sahariens des trajets difficiles et épuisants[480]."

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[479] J.O.R.F., Débats. Assemblée Nationale, 2ème séance du 3 février 1955, p. 687. Exhibit 70.

[480] J.O.R.F. Documents. Assemblée de l'Union Française, Session de 1955, Séance du 31 mars 1955, Annexe No. 111, p. 206, Exhibit 67.

5.432 For the French authorities, it was beyond questioning that such facilities had to be obtained in order to maintain adequate communications between the French military posts in southern Algeria and to establish an efficient defense position at the frontier of Libya, in anticipation of the possible extension of the conflict that had just errupted in Algeria. Such considerations were all the more important in the light of French fears of the development of arms traffic in the area in support of the Algerian nationalists.

5.433 The same concern - to impede any assistance to the Algerian war of liberation - led the French Government also to try to obtain from Libya an undertaking regarding the security of the frontier area. This involved not only not encouraging, but also suppressing in Libya's own territory, any activity that could lead to trouble in the neighbouring French territories of Tunisia and Algeria.

(v) Compensation to France with Respect to Frontiers

5.434 It will be recalled that as early as 1948, while the fate of the former Italian colonies was being studied, France had presented claims for substantial rectifications of the boundaries on the west and south between Libya and the adjoining French territories[481]. These claims were renewed by France at the United Nations during the meeting of the Ad Hoc Political Committee in December 1950[482]. At that time, the rectification sought by France concerned the frontier on the west between Libya and Algeria in the region of Ghat. A motion of this character had been adopted by the Conseil de la République on 16 March 1950, and the French Ministry of Foreign Affairs had also espoused such a rectification in a statement made to the Foreign Affairs Committee of the Union Française on 21 March 1950. The Gorse Report, mentioned above, made to the same body in March 1955, referred specifically to such a rectification, in these terms:

> "L'idée d'une rectification de frontière, plaçant sous le contrôle français les oasis, très extérieures au Fezzan proprement dit, de Ghât et Ghadamès, avec les pistes qui font communiquer Ghadamès, Ghât, Serdelés et Toummo, pourrait apparaître à la rigueur comme une compensation à l'évacuation du Fezzan

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[481] See, para. 5.365, et seq., above.

[482] See, para. 5.390, et seq., above.

> proprement dit, et peut-être comme le moyen terme d'un accord[483]."

It should be noted that the report did not deal with the part of Libya's frontier lying east of Toummo and, hence, did not suggest compensation in relation to fixing Libya's southern boundary.

5.435 The Gorse Report also mentioned the situation concerning Libya's southern boundary, saying the following:

> "Il est indispensable, par contre, que la question des frontières méridionales soit définitivement réglée par tout accord à intervenir entre les Gouvernements français et libyen. Il serait fâcheux qu'un doute subsistât sur la validité de notre thèse, qui donnerait prétexte à d'éventuels litiges et à de nouvelles revendications (... .)
>
> [N]ous ne croyons pas que l'interprétation française puisse être sérieusement contestée, mais étant donné les hésitations des cartes anglaises et libyennes, il serait bon que l'affaire fût une fois pour toute réglée[484]."

5.436 What the Gorse Report failed to mention was that General Assembly Resolution 392(V) of 15 December 1950, which France had voted for, specifically called upon France and Libya to negotiate to delimit those portions of the boundary between Libya and French territory "not already delimited by international agreement"[485]. This Resolution had been adopted by both the *Ad Hoc* Political Committee and the General Assembly *after* the French representation had corrected the earlier "bévue" made as to France's position on the boundaries between its former territories and Libya[486]. In the course of correcting this "bevue", the French representatives to the *Ad Hoc* Political Committee explained the French "thesis" referred to by M. Gorse. Resolution 392(V) was nevertheless enacted, indicating that the French "thesis" had not disposed of the question of delimiting these boundaries.

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[483] *See*, fn. 478 above, for citation and *Exhibit* reference. The Gorse Report confirmed the events of 16 and 21 March 1950 mentioned above.

[484] *Ibid*.

[485] *See*. para. 5.389, *et seq*., above.

[486] *See*. para. 5.392, *et*. *seq*., above.

5.437 The warning contained in the Gorse Report was echoed in a letter dated 2 May 1955 from the Governor General of French Equatorial Africa to the Ministre de la France d'Outre-Mer[487]. The letter mentioned -

> "... la nécessité de faire reconnaitre par ce pays (la Libye) les frontières résultant de la déclaration franco-britannique de 1899."

The letter then proceeded to set out the French thesis that had first been developed in its fully articulated form in 1921-1922 in formulating a response to the Italian protest against the 1919 Anglo-French Convention[488]:

- That Libya should be considered to be a successor State to Italy not to Turkey;
- That Libya's southern boundaries were determined by the 1899 Anglo-French Additional Declaration, as modified by the 1919 Anglo-French Convention;
- That Italy had formally recognized the 1899 Additional Declaration in the 1900-1902 Franco-Italian Accords, and
- That Libya could base no claim on the 1935 Treaty because these accords "n'ont jamais été exécutés".

This was essentially the same analysis suggested by the French representative to the Ad Hoc Political Committee in December 1950, in spite of which Resolution 392(v) had been adopted.

5.438 This letter of the Governor General of the A.E.F. then warned the French authorities in Paris of the potential risk that the French negotiators would run if the boundary question were put on the table during the negotiations. He expressed the risk in this way:

> "Je ne pense pas pour autant qu'il faille, de notre propre initiative, ouvrir des pourparlers sur un point qui ne souffre aucune discussion.

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[487] Letter of 2 May 1955, French Archives Annex, p. 169.

[488] See, para. 5.192, et seq., above.

> Demander à la Libye de reconnaître les frontières actuelles risquerait de faire supposer que nous doutons de la valeur de nos droits, nous mettre plus au moins en position de demandeurs à l'égard du Gouvernement libyen et nous exposer à un refus qui donnerait une apparence de base juridique aux éventuelles revendications de Tripoli.
>
> Or, si la Libye s'est livrée à quelques sondages (affaires d'Aouzou notamment), pour autant que je sache, elle n'a pas encore élevé officiellement la moindre revendication territoriale à notre égard."

Thus, he advised that the matter be dealt with cautiously ("avec la plus grande prudence") and that any question of delimitation between Libya and the A.E.F. be brought up only in the context of the future demarcation of the frontier. To again quote from this letter:

> "Laisser planer la moindre équivoque sur les limites de l'A.E.F. et de la Libye, serait donc fâcheux sur le plan politique comme pour la sécurité des confins.
>
> En conséquence, j'estime que les pourparlers engagés en vue de la conclusion du futur traité franco-libyen devront être conduits avec la plus grande prudence et éviter toute discussion sur le tracé des frontières. Il semble que cette question ne devrait être évoquée dans les accords que pour poser le principe d'une délimitation sur le terrain à entreprendre dans l'avenir, mais en prenant pour seules bases les traités en vigueur à la date de la création de l'Etat Libyen."

5.439 In short, the advice contained in this letter was to not attempt to delimit the frontier in negotiating the proposed treaty, but rather to set out the principles that should govern a delimitation in the future. It suggested that the sole basis for such a delimitation should be the treaties in force on the date of creation of the Libyan State. But this advice did not contemplate that Libya would be asked to agree that these treaties fixed a boundary or as to the location of the boundary they allegedly fixed, for this would run the risk of encountering Libyan non-agreement. As will be seen below, the French negotiators of the 1955 Treaty generally followed this advice as to the southern part of the frontier east of Toummo. There was no attempt to negotiate the delimitation of this sector of the boundary; only the sector of the boundary with Algeria between Ghat and Toummo, which was rectified in Annex I to the 1955 Treaty, was dealt with in the 1955 negotiations. Subsequently the segment of the Algeria frontier between Ghadamès and Ghat was rectified by a separate agreement, the 1956 Agreement between Libya and France[489]. Thus, the compensation that France sought in respect of the boundaries of Libya was achieved by two rectifications of the Libya-Algeria boundaries then fixed by international agreement; one rectification accomplished by Annex I of the 1955 Treaty; the other in the 1956 Agreement. Both rectifications related to the boundary west of Toummo.

(vi) Other General Political Aims of France

5.440 France's aims in the negotiations went beyond seeking certain compensation for its agreement to evacuate Fezzan. For France considered that its Western allies were leaving it outside the political - military arrangements that were being created to cover the Near East and Africa. This was apparent in the drawing up of the Baghdad Pact of 24 February 1955. It was also apparent from the more favourable arrangements that the United Kingdom and the United States had been able to negotiate with Libya. The point was expressed in this way in the course of the French debates in mid-1955:

> "La 'petite' affaire du Fezzan emprunte beaucoup de son importance au fait qu'elle est, après d'autres, une sorte de test de l'alliance atlantique. L'opinion française comprend mal que nos alliés aient passé avec le gouvernement libyen des accords satisfaisants pour eux-mêmes, et que nous nous voyions refuser aujourd'hui des accords infiniment plus modestes. Car ce qu'il y a d'irritant, ce n'est pas que les Libyens nous demandent d'évacuer un territoire qui a été reconnu comme leur, c'est que l'on garde en France l'opinion confuse qu'on a été dupés tout au long de l'affaire...[490]."

5.441 The broader objective of French diplomacy in the negotiations with Libya was to avoid "losing face". The end of France's military presence in Fezzan came at a time when it was widely perceived that there had been a loss of French prestige in the world. Moreover, it was imperative for France not to give the impression of having capitulated before a member State of the Arab League while the League actively supported the nationalists in Tunisia and Morocco and the Algerian national liberation movement[491]. This symbolic aspect of the problem facing the French negotiators assumed particular importance at the time in the eyes of French public opinion.

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[489] See. Agreement (Exchange of Letters) between Libya and France signed in Tripoli, 26 December 1956, International Accords and Agreements Annex, No. 29.

[490] J.O.R.F. Débats. Assemblée de l'Union Française, séance du 26 mai 1955, p. 557, Exhibit 72.

(vii) The Course of the Negotiations

5.442 The travaux leading to the final text of the 1955 Treaty is by no means complete on either the French or the Libyan side. However, there are sufficient elements of travaux to support the following conclusions:

- That there were no meaningful negotiations to delimit the Libyan boundary east of Toummo in the sense contemplated by Resolution 392(V);

- That at the time, the Libyan negotiators were uninformed as to the Libyan boundaries or the various international agreements to which the French made references, were not technically equipped to negotiate on this subject and had no intention of doing so; and France was well aware of this; and

- That, in respect to the frontier east of Toummo, the French negotiators generally followed the advice of the Governor General of the A.E.F. and avoided any direct negotiation over the delimitation of that part of Libya's boundaries with the French territories; yet as to the portion of the boundary between Ghat and Toummo, which, in contrast to Libya's southern boundary, had already been fixed by international agreement (the Franco-Italian Accord of 12 September

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[491] In an "avis" presented in May 1955 by M. Schneider of the Assemblée de l'Union française, this consideration was expressed in the following way:

> " ... abaisser notre pavillon dans cette région névralgique serait oublier la révolte sénoussiste de 1916 qui s'est propagée jusqu'au Hoggar. Ce nouveau recul, après notre repli d'Indochine et des Indes, aurait les plus graves répercussions à l'extérieur et à l'intérieur de nos frontières africaines. C'est ainsi que déjà nous avons été conduits à renforcer par deux unités sahariennes la sécurité du Hoggar troublée par l'annonce de notre départ. Tandis qu'au lendemain du retour à Tripoli de M. Ben Halim, venu négocier à Paris, la presse libyenne écrivait en substance que le petit Etat libyen, à peine indépendant, obligeait la France à capituler devant la Ligue arabe".

Ibid.. (A copy of the "avis" is attached as Exhibit 72.)

1919), the French negotiators pressed for a rectification of the boundary[492].

5.443 The available French files have not yielded much specific information regarding the intentions of the French Government other than as set out in the letter of the Governor General of the A.E.F. However, French diplomats were in close touch with their British and American colleagues during these negotiations, since the French Government put considerable pressure on the British and American Governments to support France in these negotiations. Similarly, the Libyan Government was informing the British of what was transpiring during the negotiations. Thus, there is some revealing travaux of this kind. There is also a certain amount of travaux on the Libyan side.

5.444 The first phase of the negotiations, comprising six sessions, took place in Paris from 3 to 6 January 1955. Essentially, this phase consisted of an exchange of views, at the end of which the French side presented draft minutes summarizing the views of each party on the various matters discussed. It was proposed that this draft be signed by both parties, but the Libyan team indicated it was not prepared to do so at that time. With the fall of the Mendès-France government in February 1955 and the accession of M. Edgar Faure as the new Président du Conseil, there was no prospect that an agreed text of the minutes would be arrived at covering the first phase of negotiations. The new French Government, in fact, set about reexamining France's position, including the matter of the evacuation of Fezzan[493].

5.445 On 10 May 1955, the French Embassy in London gave the British Foreign Office a two-page document entitled "Extraits du Projet de Procès-Verbal, Franco-Libyen"[494]. It covered four separate issues discussed at the January negotiations, and it set out the elements of agreement and divergence between the Libyan and French negotiators. Under the heading "Frontières", the following text appeared in these extracts from the French draft minutes:

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[492] There was, however, a dispute over the Accord's interpretation in the light of the way in which France sought to apply its terms.

[493] See. Telegram of 14 April 1955, FO 371/113892, British Archives Annex, p. 305.

[494] See. Extract from "Projet de Procès-Verbal Franco-Libyen", 10 May 1955, FO 371/113893, British Archives Annex, p. 312.

> "Les deux Gouvernements conviennent de s'en tenir, en ce qui concerne le tracé des frontières séparant les territoires français et libyen, aux stipulations générales des textes internationaux en vigueur à la date de la création de l'Etat libyen.
>
> La délimitation exacte sur la carte sera entreprise aussitôt que possible.
>
> | Proposition française | Proposition libyenne |
> |---|---|
> | de manière à être terminée avant la conclusion du traité. | sans toutefois que la conclusion du traité puisse lui être subordonnée." |

This extract from the French draft minutes reveals that Libya took the position at the January negotiations that the matter of frontier delimitation was to be settled separately, and not as one of the conditions of the treaty entering into force. It is clear from this text, prepared by the French side, that the delimitation contemplated by both sides was to be a separate exercise, in any event, and not an integral part of the treaty. The point of divergence was over whether this separate delimitation was to be agreed before or after the conclusion of the treaty.

5.446 The intentions of the parties were summarized in an earlier dispatch from the British Embassy in Paris to the Foreign Office of 5 January 1955, based on information provided by Mr. Jerbi of the Libyan delegation, who was keeping the British informed as to the progress of the negotiations[495]. According to this summary, the French Government had taken the view at the outset of the January negotiations that France was willing to withdraw its forces from Fezzan provided certain related questions were settled at the same time, one of them being that "the frontier between the Fezzan and French territory must be properly delimited"[496]. The Libyan Prime Minister had replied in the following manner at the meeting -

> "... he said that his Government were imperfectly informed, not having received all the Italian archives relating to the Laval-

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[495] Dispatch of 5 January 1955, FO 371/113890, British Archives Annex, p. 295.

[496] Attention is drawn to the reference to Fezzan. As will be seen below, the concern of the French Government was with the common boundary between Fezzan and Algeria on the west, not with Libya's southern boundary. This was quite understandable because, inter alia, most of the southern boundary of Libya concerned the hinterland of Cyrenaica, which was of British concern, since it fell within Great Britain's sphere of influence under the 1899 Anglo-French Declaration.

> Mussolini Agreement of 1935. He undertook, however, to study the question, which would take some time, and said that it could hardly be settled in the context of the present negotiations."

5.447 In the meantime, the Foreign Office was in touch with both the French and the Libyan Ambassadors in London. Here is the Foreign Office account of the Libyan Ambassador's visit, asking for British support of Libya in the negotiations:

> "The Libyan Ambassador called again on the Minister of State yesterday and referred to the frontier question raised by the French (paragraph 2(a) (ii) of your telegram No. 8[497]). The Ambassador said that the Libyan Prime Minister took a grave view of this matter since in his view the frontier had been delimited and Libya had moreover resisted Egyptian pressure over her eastern frontier. He hinted that he would like our help with the French on this. The Minister of State subsequently saw the French Ambassador and suggested that it was unwise to inject this difficult issue into the negotiations at this stage. M. Massigli denied that the frontier had been fully delimited and said that the Egyptian precedent was irrelevant; the French simply wanted to know where the frontier was. But he undertook to get into touch with Paris again. Shortly after came the news referred to in your telegram under reference[498]."

As will emerge from subsequent documents, the sector of the frontier that both Libya and France were discussing only concerned the Libyan-Algerian frontier, which France sought to rectify[499]; the southern frontier was not dealt with at the time.

5.448 The following day, 6 January, the French Ambassador dropped in again to the Foreign Office, having been in touch with Paris concerning the boundary question, which had come up during the negotiations in Paris between Libya and France. The following is taken from the Foreign Office summary of that meeting:

> "The French Ambassador called again this afternoon about the Libyan negotiations. He said he had made enquiries in Paris about the frontier question (... .)"

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[497] This is a reference to the dispatch of 5 January just discussed.

[498] Telegram of 7 January 1955, FO 371/113890, British Archives Annex, p. 303.

[499] In fact, at the opening session, M. Mendès-France had even brought up the Tunisian frontier.

> On the frontier question His Excellency said that M. Mendès-France was in no sense making this a precondition of an agreement. There was no reason for the Libyans to get excited about it. All that the French were trying to do was to establish where the frontier was between Ghat and Tummo, a stretch of some 300-400 miles in the dessert (sic). Under previous agreements with the Italians the frontier had been supposed to follow a line of hills, but unfortunately it turned out that there were no hills for it to follow. So the French thought that something should be done to rectify this anomaly. I (Anthony Nutting of the Foreign Office) said I was glad to hear that the proposal was so innocent as this. None the less I hoped the French would bear in mind Libyan susceptibilities and would keep any discussions about frontiers as quiet as possible for fear that the Egyptians might get to hear of it and make fresh difficulties about Libya's Eastern border[500]."

This sector of the border was ultimately dealt with in Annex I to the 1955 Treaty; and this was the only part of the boundary specifically dealt with in the 1955 Treaty, although it is apparent that it concerned a rectification of the boundary already established between France and Italy in the Accord of 12 September 1919[501].

5.449 With the Faure government in power in France in February 1955, the question arose as to what, if any, changes in policy the French Government intended to adopt. It has already been noted that the question of evacution of Fezzan was under review. The British Foreign Office was following these events closely. A Foreign Office report of 11 May 1955 to the British Ambassador in Tripoli set out the latest information the British had obtained from the French Government. On the matter of the Libyan boundaries, the report had this to say:

> "The Quai d'Orsay apparently considers that the French frontier to the south of Libya ought to extend northwards to embrace the whole of the Tibesti Massif. This of course is bound up with the Laval-Mussolini Agreement of 1935 which was abrogated by the Italians in 1938. The French Embassy will probably be letting us have some maps showing what it is that they want. My personal

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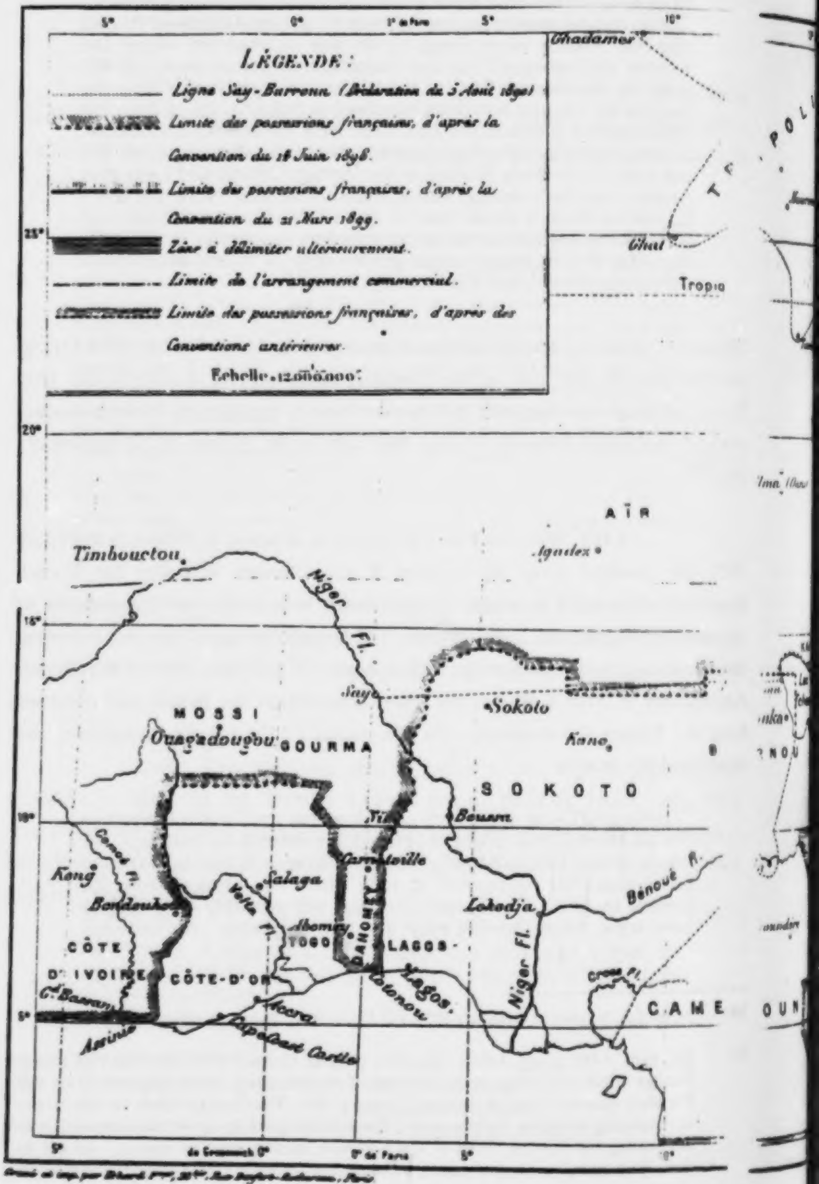
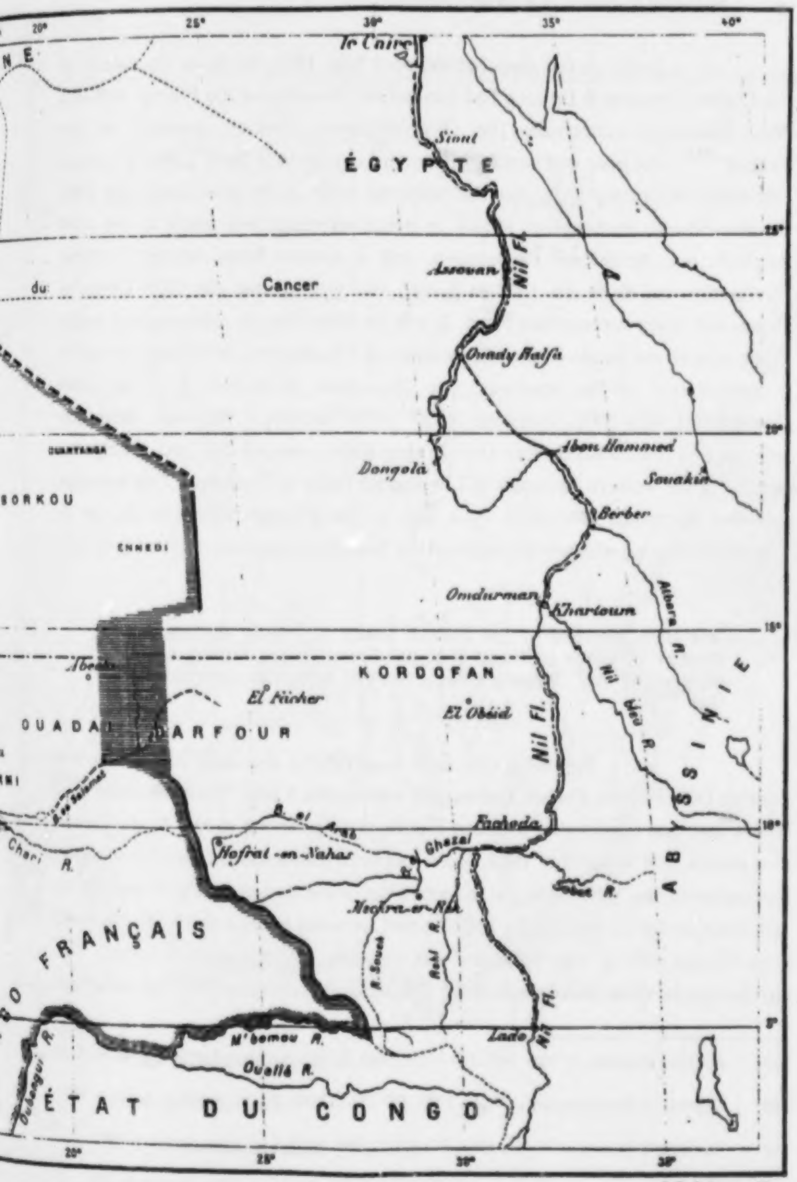
[500] Note of A. Nutting of 6 January 1955, FO 371/113890, British Archives Annex, p. 300.

[501] See, para. 5.468, et seq., below. See, also, Note of 18 April 1955, FO 371/113893, for a Foreign Office evaluation of the outcome of the first phase of the negotiations on this boundary question. British Archives Annex, p. 307. The Foreign Office saw the matter as concerning boundary "rectifications". The analysis given by the French Ambassador to M. Nutting the Foreign Office at the 6 January meeting was not correct. As will be demonstrated below, the provisions of Annex I of the 1955 Treaty brought about major changes in the boundary fixed by the 1919 Accord.


LÉGENDE :
Ligne Say-Barroua (Déclaration du 5 Août 1890)
Limite des possessions françaises, d'après la Convention du 14 Juin 1898.
Limite des possessions françaises, d'après la Convention du 21 Mars 1899.
Zône à délimiter ultérieurement.
Limite de l'arrangement commercial.
Limite des possessions françaises, d'après des Conventions antérieures.
Echelle 1/12.000.000
Ghadamès
Ghat
Tropiq
AÏR
Agadez
Timbouctou
Niger Fl.
Say
Sokoto
Kano
SOKOTO
MOSSI
Ouagadougou
GOURMA
Boussa
Carnotville
Kong
Bondoukou
Salaga
Volta Fl.
Abomey
TOGO
DAHOMEY
LAGOS
Lokodja
Bénoué R.
Niger Fl.
CÔTE D'IVOIRE
CÔTE-D'OR
Gd Bassam
Assinie
Accra
Kotonou
Lagos
Cape Coast Castle
Cross Fl.
CAMEROUN
5°
0°
5°
10°
15°
20°
25°
de Greenwich 0°
0° de Paris

Map No. 91



A

Map ?(annexed) to France-British Convention of 1899

> view is that we should be well advised to keep out of the potentially awkward question of frontier rectifications[502]."

5.450 A few days before, on 9 May 1955, M. de la Chevalerie of the French Embassy in London had handed Mr. Bromley of the Foreign Office a "Pour-Memoire" concerning the "Franco-Libyan frontier question in the Fezzan"[503]. The note was entitled "Frontière méridionale de la Libye". It made essentially two points: first, that the "texte de base" in the matter was the 1902 Barrère-Prinetti exchange of letters, in which reference was made to the 1899 Anglo-French Additional Declaration, and it quoted from Article 3 of the Declaration and from the 1902 exchange; and second, that the 1935 Treaty of Rome had never entered into force. It will be noted that no reference was made in the note to the Anglo-French Convention of 8 September 1919 fixing the point of intersection of the southeast line (described in Article 3 of the 1899 Convention) with 24°E longitude at 19° 30'N latitude. Nor was there any reference to the 12 September 1919 Franco-Italian Accord that had delimited a portion of the western boundary of Libya as far south as Toummo. This note was followed up on 26 May 1955 by a visit to the Foreign Office by M. de la Chevalerie, during which he brought up the boundary question. According to Mr. Ramsden:

> "He then referred to the French desire to rectify the southern frontier of Libya and said that the French were hoping for the support of her Majesty's Government with the Libyans over that[504]."

5.451 Following this, on 7 June 1955, a new note was handed the Foreign Office by the French Embassy to replace the 9 May "Pour-Memoire"[505]. It was identical except that it added a paragraph referring to the Anglo-French Convention of 8 September 1919, which had been omitted from the earlier paper. Nevertheless, the 1902 exchange remained the "texte de base". There was still no reference to the 12 September 1919 Accord between France and Italy, however, even though part of that boundary was certainly "meridionale" to Libya. The significance of these notes given to the British Government by the French Foreign

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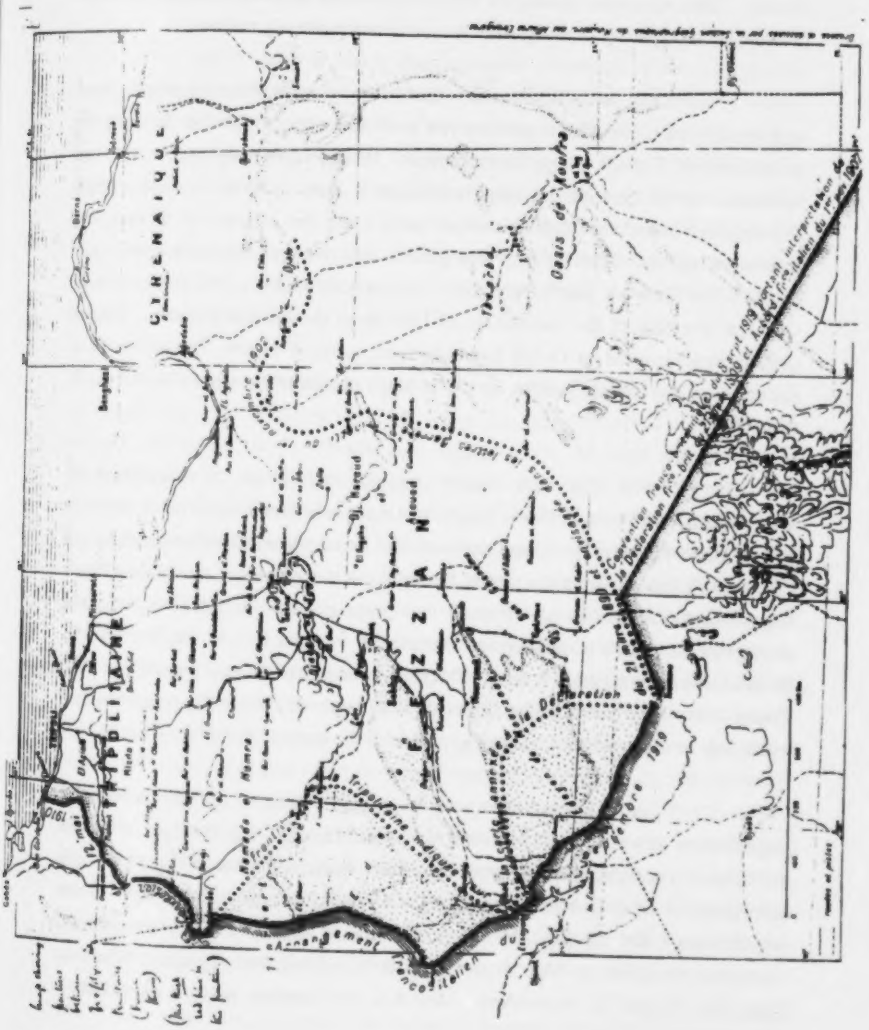
[502] Bromley-Graham, 11 May 1955, FO 371/113893, British Archives Annex, p. 315.

[503] Chevalerie Memorandum of 9 May 1955, FO 371/113893, British Archives Annex p. 310.

[504] Ramsden's Minute of 26 May 1955, FO 371/113893, British Archives Annex, p. 320.

[505] Chevalerie new note of 7 June 1955, FO 371/113893, British Archives Annex, p. 322.

Map No. 92


CYRÉNAÏQUE
TRIPOLITAINE
FEZZAN
Oasis de Koufra
Convention franco-... du 8 sept 1919 portant interprétation de la Déclaration fr.-brit. ... 1899 et Accord franco-italien du 1er nov 1902
Arrangement franco-italien du ... 1919
Tripolitaine-Fezzan

Ministry is, of course, that they set out the position of the French Government as to the southern boundary of Libya during the negotiations leading to the 1955 Treaty. This was that, based on the international agreements referred to, a conventional boundary binding on Libya and France already existed.

5.452 Meanwhile, there had been no resumption of negotiations, and the Libyan Government grew restive since this only resulted in delaying the withdrawal of French troops from Fezzan. It was at first agreed by the two Governments to resume the negotiations on 9 June in Tripoli. The French Government asked that this be moved back, citing the climate of tension that existed in Algeria. Then 20 June was picked, and this date was postponed to 26 June by the French. The Libyan Government lost patience and threatened to take the question of the evacuation of Fezzan to the United Nations. Finally, negotiations resumed on 19 July and continued for three weeks. The final texts of the series of documents making up the passage of agreements were signed on 10 August 1955.

5.453 The real reason behind this delay in resumption of negotiations had been France's desire to secure a military agreement with the British Government concerning the defense of Fezzan in wartime before signing a treaty with Libya. During the period between the two phases of the Libya-France negotiations, the British and French had been engaged in working out these arrangements. Such a military agreement was entered into by the French and British Governments on 3 August 1955, thus opening the way for signing the 1955 Treaty a few days later. The terms of this Anglo-French military agreement, which was never published, are not germane to the present territorial dispute.

5.454 There are important travaux relating to the second phase of negotiations, as well. It will be recalled that in May 1955 the Foreign Office had anticipated receiving some maps from the French Embassy[506], which was attempting to enlist British support for the French position on boundaries in the negotiations. On 12 July, M. de la Chevalerie delivered two maps to Mr. Ramsden, identified as Map A and Map B[507]. These are reproduced here as Maps Nos. 91 and 92, respectively. Map A is very familiar: it was a reproduction of the 1899 Livre jaune map, although from Mr. Ramsden's notation in the upper right-hand corner it appears that he had been incorrectly informed that the map had been annexed to the 1899 Declaration[508].

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[506] See, passage quoted in para. 5.449, above.

[507] Note of Ramsden of 12 July 1955, with Maps A and B. FO 371/113907, British Archives Annex, p. 324.

5.455 Map B was a map specially prepared by the Geographic Section of the French Ministry of Foreign Affairs, setting out the French "thesis" as to Libya's boundaries - indicated on the map by a thick, solid line. Starting at the northwest of the map appears the Tunisia-Libya boundary delimited by the 1910 Convention as far south as Ghadamès. From there the solid line purports to follow the line delimited by the Franco-Italian "Arrangement" of 12 September 1919 as far south as Toummo. In fact, parts of this line deviated substantially from that line. For example, the entire area comprising the Edjélé oilfields is placed on the Algerian side of the line[509].

5.456 In addition to the solid line depicting the French "thesis" as to Libya's western boundary, Map B (Map No. 92) contained a dotted line entitled "Frontière de la Tripolitaine indiquée sur la carte annexée à la Déclaration de 2 mars 1899 et envisagée dans les lettres Barrère-Prinetti du 1er novembre 1902". The solid line follows the dotted line in the sector of the boundary between Toummo and the intersection of 16°E longitude with the Tropic of Cancer, apparently relying on the "carte annexée" for this sector. The line running southeast from that point to the intersection of 24°E longitude and 19°30'N latitude then completes the frontier. This line is entitled: "Convention franco-britannique du 8 septembre 1919 portant interprétation de la Déclaration franco-britannique du 21 mars 1899 et Accord franco-italien du 1er novembre 1902." So the 1902 Accord is used both to complete the Toummo - Tropic of Cancer part of the line and to support the French thesis concerning the southeast line, as modified in 1919, a modification that occurred 17 years after the 1902 letters were exchanged! Map B brings out with singular clarity the fact that the southeast line from the Tropic of Cancer concerned the hinterland of Cyrenaica not of Tripolitania. It also constitutes another occasion on which the French Government misinformed the British Government that a map had been annexed to the 1899 Anglo-French Declaration.

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[508] The question mark appearing in Mr. Ramsden's notation in the upper right-hand corner of Map A suggests that he had his doubts about this.

[509] These deviations will be demonstrated below when the rectifications of the Ghat-Toummo sector accomplished by Annex I to the 1955 Treaty and by the 1956 Agreement are considered.

5.457 On 20 July 1955, Mr. Ramsden of the Foreign Office was given another paper by M. de la Chevalerie of the French Embassy[510]. It summarized the unresolved points in the negotiations then in their second phase in Tripoli. Item 5 related to frontiers and is quoted below:

> "Délimitation des Frontières
>
> Le Gouvernement français estime que les deux parties devraient convenir de s'en tenir en ce qui concerne le tracé des frontières séparant les territoires français et libyen, aux stipulations générales des textes internationaux en vigueur à la date de la création de l'Etat libyen.
>
> Le Gouvernement français considère que les principes de cette délimitation devraient être définis avec suffisamment de précision avant la conclusion du traité pour que l'abornement ultérieur sur le terrain ne soulève pas de difficultés."

If reference is made to the extract from the minutes prepared after the first phase of negotiations in January and set out in paragraph 5.447 above, it will be seen that the first paragraph of this paper was very close to the comparable paragraph of the draft minutes. The second paragraph of the paper indicated that the French wished to have the principles to govern delimitation sufficiently defined, prior to conclusion of the treaty, so that demarcation could readily be accomplished.

5.458 The next day, in a subsequent note, Mr. Ramsden records certain new information received from the French Embassy:

> "The French have abandoned their original thesis that the Treaty should not come into effect until delimitation of the frontier had been carried out. (This was in any case a totally unrealistic demand).[511]"

5.459 It is now appropriate to consider the quite limited Libyan records relating to phase two of the negotiations. These consist primarily of unsigned minutes[512]. From these, it appears that at the opening session on 19

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[510] See, attachment to Ramsden's Minute of 20 July 1955, FO 371/113896, British Archives Annex, p. 333.

[511] Ramsden note, 21 July 1955, FO 371/113896, British Archives Annex, p. 337.

[512] The portions of the Libyan records referred to here in their English translations are annexed as Exhibit 73.

July the French delegation presented a draft treaty in French[513]. As to the discussion of boundaries that ensued, the following entry appears for 20 July, translated from the Arabic:

> "Ambassador Dejean:
>
> He proposed an exchange of memoranda with maps attached to them indicating the demarcation of the frontiers. He indicated that the question is a very simple one. He also proposed that later on a mixed committee be set up to fix the frontiers and draw them precisely. However, for the present time it is sufficient to say that the frontier passes a number of points which have been agreed upon[514].
>
> The Prime Minister:
>
> The question of the frontiers has no connection with the Treaty and it must not be linked with it, especially since the drawing of the frontiers requires experts and specialists who are not currently available in Libya. However, the matter will be studied and we shall return to it in the near future."

5.460 The same minutes contain entries for the sessions held on 26 July, and 28 July. For 26 July appears the following:

> "The frontiers: The two parties agreed to an interpretative letter relating to the frontiers, and similarly they agreed to the formation of a Franco-Libyan committee to demarcate the frontier."

For 28 July, the following entry appears:

> "The Frontiers
>
> The Prime Minister:
>
> (He said) that the question was not free from difficulty since the Italians had occupied many centres behind the exisiting frontier.
>
> Ambassador Dejean:
>
> (He explained) that it had actually been done but in an illegal manner and that Italy had exploited France's weakness during the last war to ensconce itself in its lands and that it had crossed over the borders which had been agreed upon under the Agreement of

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[513] Most of the Libyan team neither read nor spoke French.

[514] It is clear that the French Ambassador was referring here to that portion of the Libyan-Algerian frontier ultimately dealt with in Annex I of the Treaty.

> 1919[515] which were still valid at the present time. As far as the Agreement of 1935 was concerned, it had not been ratified by the French parliament and was thus illegal and had no value internationally[516].
>
> The Prime Minister:
>
> (He proposed) that the question of the frontiers be deferred at the present time until the Libyan side had had time to study the subject, and then experts could be dispatched to work with French experts to reach an agreement on delimitation and he asked that it be considered sufficient to say that the Agreement of 1919 was acceptable and that the implementation of it be left to the near future.
>
> Ambassador Dejean:
>
> (He insisted) that it was not possible to conclude the Treaty without an agreement on the frontiers and he proposed that an agreement be reached on three points through which the frontier passed between Ghat and Toummo, and that the demarcation be left until later.
>
> The Prime Minister:
>
> (He proposed) that they should be satisfied with two points only south of Ghat, namely Anaï and Derwat Al Jamal[517]. He stated that he was unable to accept another point north of Ghat until the line drawing had been agreed upon. After lengthy discussions the French delegation accepted the two points proposed by the Libyan side which were Anaï and Derwat Jamal."

5.461 During the course of the negotiations, a joint expedition had been made to the Ghat-Toummo region by a small Libyan-French team, which met with members of the Tuareg tribe and examined maps of the area. Libya's Colonel Senoussi al-Atioush[518], who made the trip, subsequently reported on this visit. What the teams were concerned with was described in his report in this way -

> "At 5.30 in the morning of 2 August 1955 we took the same military aircraft, with me were two of the Touareg: one of them is a member of the legislative counsel representing that area. We began to

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[515] The reference here is clearly to the Franco-Italian Accord of 12 September 1919 concerning the boundary with Algeria as far south as Toummo, as the ensuing exchange makes clear.

[516] This incorrect statement illustrates how the Libyan delegation, which had not studied the boundary question, was misled by the French during the negotiations.

[517] This is an example of an Arabic place name, which in this case means "camel's hump".

[518] The then acting chief of the Libyan Army Staff and in charge of the General Staff.

> survey and look for peaks of the mountains and the direct routes between Ghat and Toummou. We also flew a little over the boundary proposed by the French between the those two points Ghat and Toummo. Then we went to the French-Algerian post in Djannet where the aircraft landed at the airport. We moved to the area which is 25 kilometers from the airport where we had been received by the French officer. Then we took the aircraft to Ghat, surveying the mountains and valleys lying between Ghat and Djannet and the frontier proposed by the French between those two points[519]."

The al-Atioush Report went on to say the following:

> "After, I explained to the Touareg members the questions of the frontiers on the map, proposed by the French side, and, after, I explained to them that we, the Libyan side, will decide our frontier with the French side, on the basis of the Franco-Italian Agreement of the year 1919 which I read to them and explained its contents. And I informed them about discussions of the frontier between Italy and France in the year 1935. Although the French gave from their side a portion of the land to Italy, that Agreement did not reach it's International legal status and was not approved of because Italy was not satisfied with it, and this situation drove us and the French to negotiations on the basis of the 1919 Agreement.

The Report then made certain recommendations which included the following:

> "To review the Franco-Libyan frontiers anew, on the basis that Libya asserts the previous Italian claims which cover all the lands where the Turkish forces and the Senoussi Zawaiya had been stationed, and because of it's justification the French agreed to cede, more than once, parts of those territories to Italy.[520]".

5.462 What this expedition and subsequent report emphasized was that the only boundary to which any attention was being given during the negotiations was Libya's western boundary as far south as Toummo. It was apparent that the French were not satisfied with the delimitation set out in the Franco-Italian Accord of 12 September 1919 and sought a rectification of it between Ghat and Toummo. This was accomplished by Annex I of the 1955 Treaty. Subsequently, and as a condition of ratifying the 1955 Treaty, France was to seek a rectification of the Ghadamès-Ghat segment of the boundary with Algeria. This was accomplished by the 1956 Agreement between Libya and France, the signature of which was a condition of French ratification of the 1955 Treaty. With the exception of these rectifications of the boundaries that had been fixed by an international agreement in force at the time of Libya's independence, namely the Franco-Italian Accord of 12 September 1919, there were no boundary delimitation negotiations between Libya and France leading up to the 1955 Treaty. Thus, the obligation imposed on France and Libya under Resolution 392(V), which concerned boundary delimitation not rectification[521], was in no way carried out by the 1955 Treaty: the Libyan boundary to the east of Toummo was not dealt with at all, and the boundaries west of Toummo concerned rectifications and, hence, fell outside the scope of the Resolution.

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[519] The relevant portions of the report, translated into English, are annexed as Exhibit 74.

[520] Ibid.

(viii) The Provisions of the 1955 Treaty Concerning Boundaries

5.463 An ensemble of agreements were concluded between Libya and France on 10 August 1955 following the negotiations discussed above. These included:

- A Treaty of Amity and Good Neighbourly Relations;
- An Agreement relating to the withdrawal of French forces from Fezzan;
- An Agreement of Good Neighbourly Relations;
- An Economic Cooperative Agreement;
- A Cultural Agreement; and
- Eight exchanges of letters set out in Annexes.

The various treaties and agreements expressly required ratification by the two Governments.

5.464 Before proceeding to an analysis of the 1955 Treaty, it is again to be observed that this case is not a dispute over the meaning of this Treaty or of a boundary line alleged to have emanated from the Treaty; it is a territorial dispute in circumstances where no conventional boundary east of Toummo exists. The 1955 Treaty is a part of the history of relevant events; and like other events mentioned earlier, it constitutes further evidence of the absence of a conventional boundary today between Libya and Chad.

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[521] See, para. 5.433 et seq., above.

5.465 Turning to the provisions of the 1955 Treaty, the question of Libya's boundaries with Tunisia, Algeria, French West Africa and French Equatorial Africa concerned primarily Article 3 and Annex I thereto[522]. The French texts of Article 3 and of Annex I are set out below, starting with Article 3[523]:

> "Les deux Hautes Parties Contractantes reconnaissent que les frontières séparant les territoires de la Libye d'une part, des territoires de la Tunisie, de l'Algérie, de l'Afrique Occidentale Française de l'Afrique Equatoriale Française d'une part, du territoire de la Libye d'autre part, sont celles qui résultent des actes internationaux en vigueur à la date de la constitution du Royaume-Uni de Libye tels qu'ils sont définis dans l'échange de lettres ci-jointes (Annexe I)."

Annex I consisted of the following: (i) a list of the "actes internationaux" to which Article 3 referred; (ii) a provision relating to the course of the boundary line between Ghat and Toummo, which had been fixed by the Franco-Italian Accord of 12 September 1919; (iii) a provision for demarcation that, from the context, must certainly relate only to the Ghat-Toummo segment.

5.466 The enumeration of the "actes internationaux" in Annex I was as follows:

> "Il s'agit des textes suivants:
>
> - la convention franco-britannique du 14 juin 1898;
> - la déclaration additionnelle, du 21 mars 1899, à la convention précédente;
> - les accords franco-italiens du 1er novembre 1902;
> - la convention entre la République Française et la Sublime Porte du 12 mai 1910;
> - la convention franco-britannique du 8 septembre 1919;
> - l'arrangement franco-italien du 12 septembre 1919."

5.467 The provision of Annex I concerning the Ghat-Toummo sector read as follows:

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[522] At the time, Algeria was part of metropolitan France.

[523] Both the French and Arabic versions were recognized as authentic texts.

> "En ce qui concerne ce dernier arrangement et conformément aux principes qui y sont énoncés, il a été reconnu par les deux délégations qu'entre Ghat et Toummo la frontière passe par les trois points suivants, à savoir: la Trouée de Takharkhouri, le col d'Anai et le point côté 1010 (Garet Derouet el Djemel)."

5.468 The provision of Annex I as to demarcation read as follows:

> "Le gouvernement français est prêt à désigner des experts qui pourraient faire partie d'une commission mixte franco-libyenne chargée de procéder à l'abornement de la frontière partout où ce travail n'a pas encore été effectué et où l'un des deux gouvernements l'estimerait nécessaire.
>
> En cas de désaccord au cours des opérations d'abornement, les deux parties désigneront chacune un arbitre neutre et, en cas de désaccord entre les arbitres, ces derniers désigneront un surarbitre également neutre qui tranchera le différend."

5.469 After the conclusion of the 1955 Treaty, the French Government professed that the question of Libya's boundaries had been definitively settled. However, the Treaty contained no indication in Article 3, or Annex I, or elsewhere, that these provisions were in implementation of Resolution 392(V) and constituted the result of negotiations between Libya and France with respect to "that portion of (Libya's) boundary with French territory not already delimited by international agreement". It has been shown above that there were no such delimitation negotiations, certainly not as to the boundary east of Toummo. The only detailed boundary discussions related to the sector of the Libya-Algeria boundary between Ghat and Toummo, which in any event are properly characterised as involving a boundary rectification not a boundary delimitation. Nevertheless, in the "Exposé des motifs" of the law authorizing the President of France to ratify the 1955 Treaty, the following statement of the French Government appears:

> "Certains problèmes frontaliers, nés de l'imprécision des textes internationaux qui régissent la matière, ont été résolus par l'article 3 du traité, en particulier dans le secteur compris entre Ghât et Tummo, où l'accès de la France à trois points essentiels jusqu'à présent contestés, a été expressément admis; par le même article, la Libye renonce à se prévaloir des accords conclus en 1935 entre MM. Laval et Mussolini et accordant à l'Italie la partie septentrionale du Tibesti, tandis qu'une procédure d'arbitrage est

> instituée d'un commun accord en vue de trancher les difficultés qui pourraient s'élever au cours des opérations d'abornement[524]."

The clear implication of this statement was that the French Government considered the Libyan boundary west of Toummo to have been resolved. As to the boundary east of Toummo, the French Government relied on what it described as Libya's renunciation of the 1935 Treaty.

5.470 But by what wave of the magic wand had questions over Libya's boundary been resolved? For with the exception of the Ghat-Toummo segment, all that Article 3 and Annex I accomplished was a *renvoi* to certain "actes internationaux" in force at the time of Libya's independence. The words of Article 3 that Libya and France "reconnaissent ... que les frontières ... sont celles qui résultent des actes internationaux en vigueur" on the date of Libyan independence were a reflection of France's confidence in its "thesis" that a conventional boundary already existed in 1951. This "thesis" had not been accepted at the United Nations; if it had, Resolution 392(V) would have been superfluous. Nor had this "thesis" been accepted by Libya, which had made no study of the texts and considered the question of boundary delimitation to be a quite separate exercise outside of the scope of the 1955 Treaty. The "thesis" leaves completely unexplained the question how in 1955 a conventional boundary existed on the basis of "actes internationaux" predating 1920 when, in 1935, in urging the French Parliament to authorize ratification of the 1935 Treaty, the French Government informed the Parliament that there was no such boundary[525].

5.471 There is another striking aspect of the French *Exposé des motifs*. If France was so anxious to have confirmed that the boundary fixed by the 1935 Treaty was not recognized by Libya or France to apply, why did Article 3 or Annex I not include a specific renunciation of the 1935 boundary? The answer seems clearly to be that the French Government followed the advice of the Governor General of the A.E.F. and exercised "la plus grande prudence" in discussing the boundary between the A.E.F. and Libya (that is, the southern boundary east of Toummo). As a result, even the 1935 Treaty boundary was not dealt with directly, but an implied renunciation by Libya was considered to be safer, the technique being to leave the 1935 Treaty off the list of "actes internationaux" set out in Annex I.

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[524] *J.O.R.F. Documents Parlementaires*, Assemblée Nationale, Session ordinaire de 1956-1957, séance du 13 novembre 1956, Annexe No. 3212, p. 426. (A copy of this page is attached as *Exhibit* 75.)

[525] *See*, para. 5.336, above.

5.472 The intended meaning of the words of Article 3 just quoted above in paragraph 5.465 become quite clear if the extract of the minutes prepared by the French negotiating team and given to the British Foreign Office on 19 May 1955[526], and the note subsequently handed to the Foreign Office on 20 July 1955[527], are again examined:

- From the minutes: "Les deux Gouvernements conviennent de s'en tenir, en ce qui concerne le tracé des frontières ..., aux stipulations générales des textes en vigueur à la date de la création de l'Etat libyen[528]."

- From the note: "Le Gouvernement français estime que les deux parties devraient convenir de s'en tenir en ce qui concerne le tracé des frontières ..., aux stipulations générales, etc. ... [529]."

5.473 What the parties agreed to was to "abide by" those boundaries that resulted or emerged from international agreements in force at the time of Libya's independence. This was to be done in a delimitation exercise that was contemplated to be separate and apart from the Treaty negotiations. Though outwardly confident of its "thesis" as to the effect of these agreements, the French Government did not dare to risk seeking Libya's specific agreement as to the effect of these agreements. It was thought to be enough that Libya "abide by" what the French Government regarded to be the inevitable, but unstated, result of these agreements. From the standpoint of the Libyan team, who had not looked into what "actes internationaux" were in force - they had not even seen copies of the relevant documents - the Article 3 formulation involved no risk at the time. For after the 1955 Treaty was signed, the Libyan Government could then conduct the necessary research to find out just which agreements were in effect in 1951. If, for example, the Libyan Government concluded that the 1935 Treaty boundary applied, contrary to what the French negotiators had told the Libyan team, then that boundary would apply. The omission of the 1935 Treaty from the list set out in Annex I would, in such circumstances, be of no consequence.

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[526] See, para. 5.450, above.

[527] See, para. 5.457, above.

[528] Minutes of 10 May 1955, FO 371/113893, British Archives Annex, p. 313.

[529] Attached note, item 5, FO 371/113896, British Archives Annex, p. 334.

5.474 To pursue this point further, it is clear that (i) the "actes internationaux" listed in Annex I were not intended to be an exclusive listing of possibly relevant agreements and (ii) a boundary established in any particular one of the listed "actes internationaux" was not necessarily acceptable or sufficiently precise to serve as the delimitation of the boundary contemplated to be undertaken by the parties in 1955. Each of these points will be considered separately.

5.475 That the listing was not exclusive seems clear enough from the words "tels qu'ils sont définis" in Article 3[530]. But any doubt on this score was resolved by Chad in its Application to the Court filed on 3 September 1990, for in listing the series of agreements from which the "tracé des frontières" was alleged to have been inherited by Libya and Chad, two agreements not listed in Annex I make their appearance: the Protocol of 10 January 1924 and the Declaration of 21 January 1924. This fact, in and of itself, establishes that no boundary delimitation was intended to emerge from Article 3 and that the Article was only meant to indicate the basis for a subsequent, and quite separate, boundary delimitation which, for the portion of the boundary east of Toummo, never took place.

5.476 The second point emerges from the fact that even the Franco-Italian Accord of 12 September 1919, which did delimit the Ghadamès-Toummo sector of the Libyan boundary, was not found acceptable by France, which sought (and obtained) a rectification of it between Ghat and Toummo (in Annex I to the 1955 Treaty) and between Ghadamès and Ghat (in the 1956 Treaty). Even accepting, solely for the purposes of argument, the French view that Annex I was only a clarification of the 1919 Accord, it is evident that the 1919 Accord, standing alone, was not an adequate basis for delimitation of the boundary in the opinion of the French Government. Thus, the references to these "actes internationaux" was intended merely to create the framework for the subsequent delimitation negotiations that were contemplated. The formula was a satisfactory one for Libya since it could postpone dealing with the question of what agreements were in effect in 1951 until after it had been able to obtain and to study all the documents in question. For Libya, the matter of urgent importance was the evacuation of the French forces.

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[530] It is clear that "définis" refers to the "actes internationaux" and not to "les frontières".

5.477 Even if the French Government had been confident in 1955 that the "actes internationaux en vigueur" in 1951 fixed the Libyan boundaries with the French possessions, no such confidence was shared by the Libyan side. They had not even studied the question nor did they propose to do so then. So Libya could not have acquiesced in the French view of the boundary situation; and there is no evidence at all to show that Article 3 itself was intended to delimit the boundary east of Toummo. It was contemplated that such a delimitation would follow as a separate exercise - an exercise that never took place.

5.478 Aside from the general ambiguity of Article 3 and Annex I - for they hardly can be regarded as the sort of boundary provisions that one would expect to find in a treaty that purported to delimit a boundary - there is a more specific ambiguity that arises from the use of the term "actes" in Article 3 and the term "textes" in Annex I. This problem was noted by Sir Gerald Fitzmaurice as rapporteur on the law of treaties for the International Law Commission. In the discussion there of Article 14 - the treaty considered as text and as legal transaction - the following comment appears:

> "Formal validity has two constituents, the text and the formal acts giving the text the character of a legal transaction. Considered purely as a text, the treaty is a document, rather than a legal act or transaction. In all talk of treaties there is this ambiguity - a treaty is both the document embodying an agreement, and the agreement itself. In the former sense, there can be a treaty although it is not in force, or has ceased to be in force ... (I)f the text does not itself constitute in law the agreement, it is nevertheless the indispensable, and usually the sole, evidence of what that agreement is."

5.479 But considered either as "actes" or as "textes" the agreements considered in Annex I, other than the Franco-Italian Accord of 12 September 1919 that concerned the portion of Libya's frontier between Ghadamès and Toummo, did not result in a boundary binding or Libya.

(ix) The Relevance of the 1935 Franco-Italian Treaty of Rome in Understanding the 1955 Treaty

5.480 The 1935 Treaty of Rome has an important bearing on understanding the meaning and effect of the 1955 Treaty. The French "thesis", now adopted by Chad, was that the boundary agreed between France and Italy in the 1935 Treaty never took effect between them due to the failure of the Treaty to enter into force. As a result, according to this "thesis", the boundary east of Toummo reverted to that of the 1919 line - that is to the modified line agreed between Great Britain and France in the Agreement of 8 September 1919 in "interpreting" Article 3 of the Anglo-French Declaration of 1899.

5.481 It has been amply demonstrated above that no boundary binding on Italy emerged from either the 1899 or the 8 September 1919 agreements. In 1935, the French Government formally and officially admitted that east of Toummo no conventional boundary existed that was binding on Italy. This admission appears in the *Exposé des motifs* that accompanied the draft law, presented by the French Ministers of Foreign Affairs and of Colonies to the French Parliament, to authorize ratification of the Treaty. This document has been examined above[531], but it is useful to consider again here the text of a portion of this official statement by the French Government:

> "L'arrangement du 12 septembre (1919) laissait l'Italie et la France sans frontière conventionelle à l'Est de Toummo, le cabinet de Rome s'étant toujours refusé à reconnaître que la ligne de démarcation fixée par les accords franco-anglais de 1898[532] et 1919 entre les zones d'influence de la France et de la Grande-Bretagne pût valoir à l'égard de l'italie comme frontière politique entre territoires de souveraineté."

5.482 This was no mere slip of the pen. In the same *Exposé* the same point is repeated twice more. In his appearance before the French Senate to answer questions concerning the Treaty, Pierre Laval, on behalf of the French Government, made the same point: that the 1935 Treaty accomplished a delimitation of the frontier, not the rectification of a pre-existing delimited frontier[533].

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[531] *See*, para. 5.333, *et seq*., above.

[532] Omission of reference to the 1899 Declaration may be explained by the fact that the Declaration amended and became an integral part of the 1898 Convention, and was ratified at the same time.

5.483 If, in 1935, the French Government admitted that no conventional frontier existed between the Italian and French possessions east of Toummo - the end point of the delimitation accomplished by the Franco-Italian Accord of 12 September 1919 - it is impossible to see how, in 1955, the French Government could plausibly claim to regard the same frontier to exist on the basis of "actes internationaux" that were in force in 1951. It is impossible to see how it could plausibly be claimed that Libya in 1955 had, in Article 3 and Annex I of the 1955 Treaty, agreed to a specific delimitation of this boundary based on those "actes".

(d) The Agreement of 26 December 1956 Between Libya and France Modifying Part of Libya's Frontier with Algeria

5.484 The entering into of the 1956 Agreement and the ratification of the 1955 Treaty were closely connected events. They will be taken up here chronologically - the ratification of the Treaty depended on agreement to the undertakings of the 1956 Agreement being reached first. Ratifications were not exchanged until 20 February 1957, at which time the 1955 Treaty entered into force.

5.485 The 1956 Agreement concerned the Algerian-Libyan frontier between Ghadamès and Ghat. It is relevant to the territorial dispute between Libya and Chad because it has an important bearing on the 1955 Treaty, just as does the provision of Annex I of the 1955 Treaty, which concerned the sector of the Libyan frontier further south, between Ghat and Toummo. Since neither frontier sector concerned the present frontier area between Libya and Chad, the rectifications of these sectors of the Libyan boundary are not part of the territorial dispute between Libya and Chad. To the extent Libya has any questions concerning the boundaries that resulted from the 1956 Agreement or from the provisions of Annex I of the 1955 Treaty, these are matters to be taken up by Libya with the State concerned and are not part of the case submitted to the Court by Libya and Chad.

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[533] See, para. 5.339, above.

5.486 The exchange of letters constituting the 1956 Agreement was drafted by the French Government so as to appear to concern "the delimitation of the Algerian-Libyan frontier between Ghat and Ghadamès, as indicated in the Franco-Italian Arrangement of 12 September 1919"[534]. In similar fashion, the provision of Annex I to the 1955 Treaty, relating to the boundary between Ghat and Toummo, was made to appear to be a precision of the 1919 boundary "conformément aux principes qui y sont énoncées". In both cases, the form of the arrangement is deceptive. For both the 1956 Agreement and that provision of Annex I to the 1955 Treaty accomplished rectifications in the pre-existing boundary delimited in 1919. They were France's quid pro quo for the evacuation of its troops from Libya's territory pursuant to the 1955 Treaty. These rectifications of Libya's frontier in favour of France had been sought as far back as 1948[535].

5.487 But there are two additional points to be made. The first is the observation, which has been made earlier, that these rectifications were the only boundary matters that were discussed between the parties in negotiating the 1955 Treaty for they concerned the boundaries changes that the French Government insisted should be agreed before the Treaty took effect. As long as the changes in the boundary desired by France between Ghat and Toummo could be agreed before signing the 1955 Treaty, the delimitation of the southern boundary could be left for accomplishment at a later date without being made a condition of the Treaty itself. But it turned out that the French negotiators did not rectify enough of Libya's western boundary by Annex I of the 1955 Treaty to satisfy the new French Government and the French Parliament. Thus, additional boundary modifications accomplished by the 1956 Agreement were imposed as a condition of ratification of the 1955 Treaty (and hence of the evacuation of French forces from Fezzan).

5.488 The second point concerns the extent to which these rectifications deviated from the boundary delimited in 1919. This may be demonstrated on a map. Taking first the Ghat-Toummo segment of the boundary, dealt with in Annex I, Map No. 93 is a sketch depicting the approximate extent of the divergence of the boundary that passes through the

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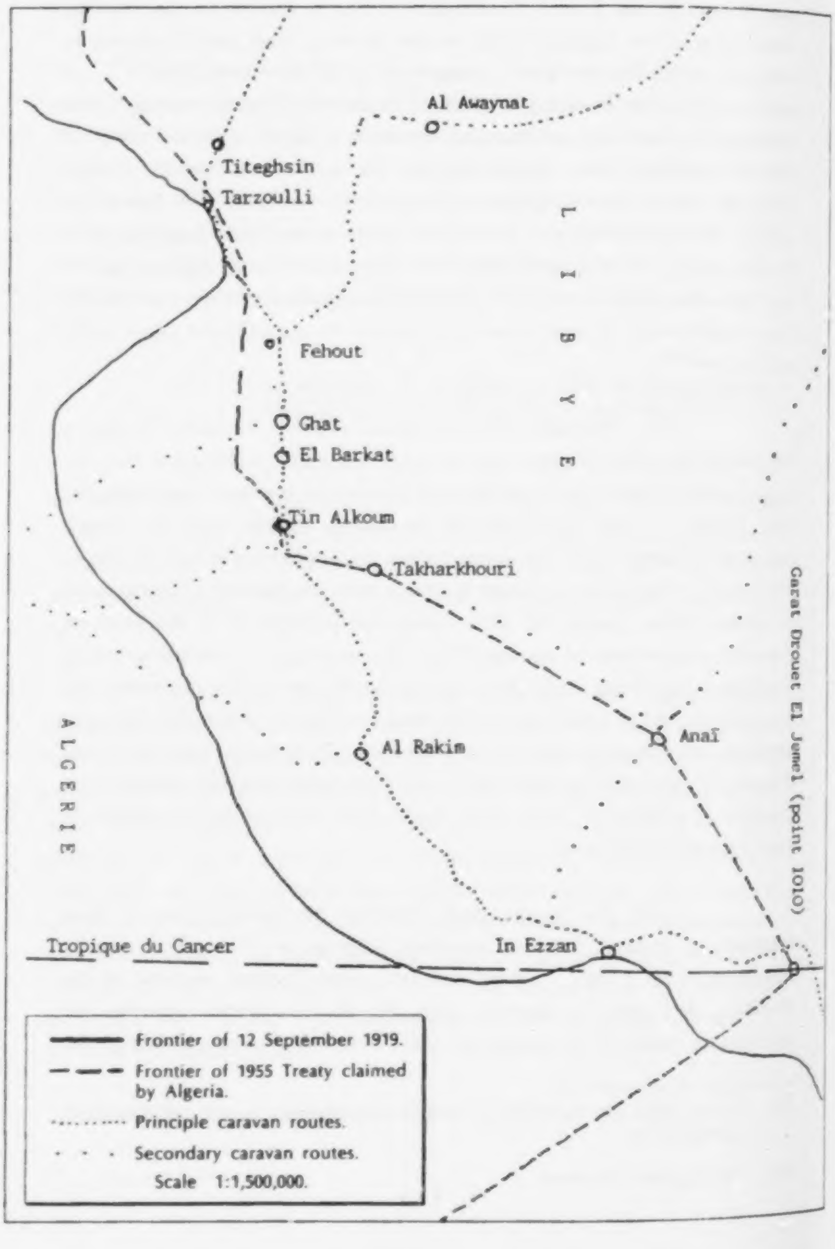
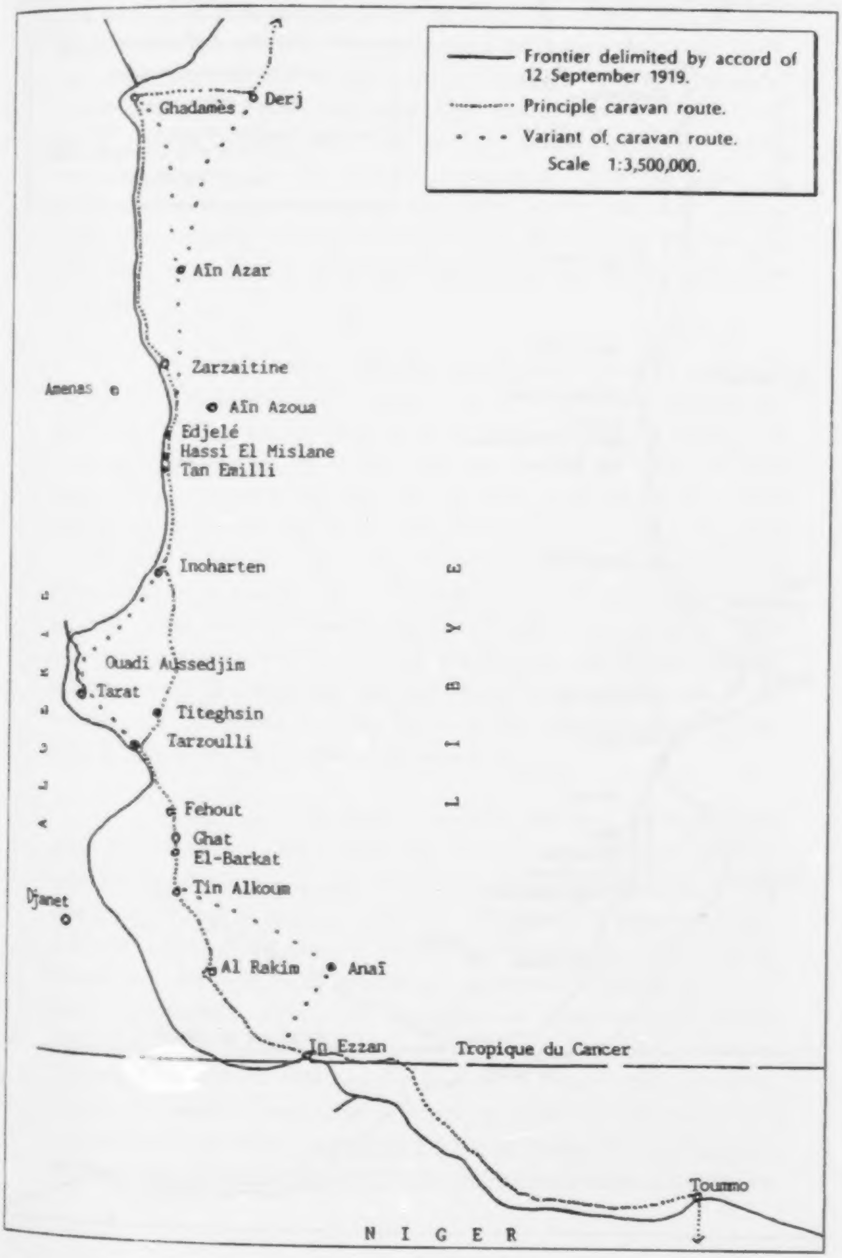
[534] A copy of the 1956 Agreement is contained in International Accords and Agreements Annex, No. 29.

[535] See, e.g., para. 5.365, above.

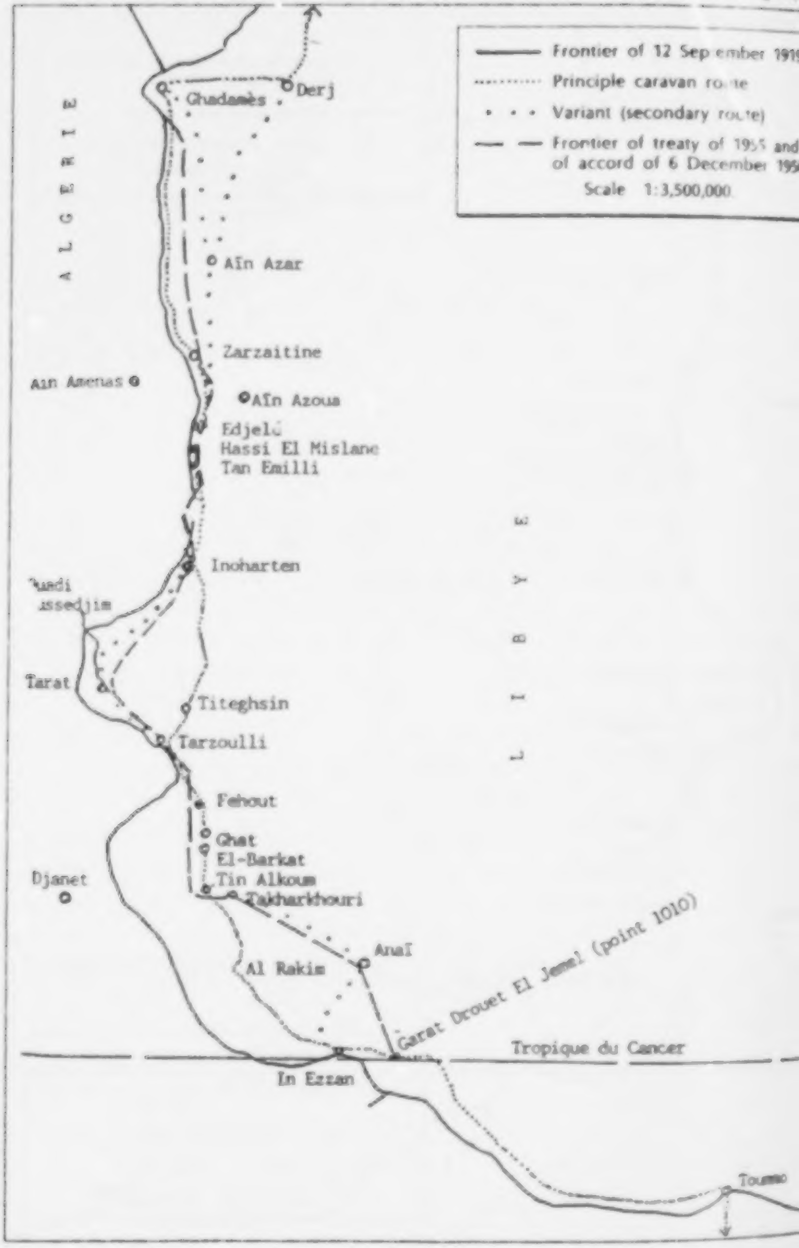
Map No. 93


Al Awaynat
Titeghsin
Tarzoulli
LIBYE
Fehout
Ghat
El Barkat
Tin Alkoum
Takharkhouri
Garat Drouet El Jemel (point 1010)
ALGERIE
Al Rakim
Anaï
Tropique du Cancer
In Ezzan
Frontier of 12 September 1919.
Frontier of 1955 Treaty claimed by Algeria.
Principle caravan routes.
Secondary caravan routes.
Scale 1:1,500,000.

Map No. 94


Frontier delimited by accord of 12 September 1919.
Principle caravan route.
Variant of caravan route.
Scale 1:3,500,000.
Ghadamès
Derj
Aîn Azar
Zarzaitine
Amenas
Aîn Azoua
Edjelé
Hassi El Mislane
Tan Emilli
Inoharten
Ouadi Aussedjim
Tarat
Titeghsin
Tarzoulli
Fehout
Ghat
El-Barkat
Tin Alkoum
Djanet
Al Rakim
Anaï
In Ezzan
Tropique du Cancer
Toummo
ALGERIE
LIBYE
NIGER

Map No


Frontier of 12 September 191
Principle caravan route
Variant (secondary route)
Frontier of treaty of 1955 and of accord of 6 December 195
Scale 1:3,500,000
ALGERIE
LIBYE
Ghadamès
Derj
Aîn Azar
Zarzaitine
Ain Amenas
Aîn Azoua
Edjelé
Hassi El Mislane
Tan Emilli
Inoharten
Ouadi Issedjim
Tarat
Titeghsin
Tarzoulli
Fehout
Ghat
El-Barkat
Tin Alkoum
Takharkhouri
Djanet
Anaï
Al Rakim
Garat Drouet El Jemel (point 1010)
Tropique du Cancer
In Ezzan
Toummo

three points designated in Annex I (Takharkhouri, Anaï and Point 1010), shown by a dashed line, from the approximate boundary that resulted from the 1919 Accord, shown by a solid line. This divergence is the result of two factors: (i) the 1919 Accord provided that the line should pass along the "crête des montagnes" between Ghat and Toummo, whereas the three points designated in Annex I lie to the northeast of these peaks; (ii) the 1919 Accord contained a second, overriding criterion: "et en attribuant toutefois à l'Italie les lignes de communications directes entre ces mêmes localités", whereas the Annex I line, as delimited by the mixed commission by the drawing of straight lines between the three points, leaves much of the caravan route south of Ghat, on the Algerian side of the line.

5.489 Two other maps have been prepared to show the divergence from the 1919 delimitation accomplished by the 1956 Agreement: Map No. 94, which shows the 1919 line in relation to the two caravan routes ("principale" and "variante"); and Map No. 95, on which the lines resulting from both the 1956 Agreement and Annex I to the 1955 Treaty are shown as far south as Point 1010. On Map No. 95, the principal and secondary caravan routes are shown by a small and by a large dotted line. The revision of the 1919 boundary accomplished by Annex I is shown by a dashed line. It can be seen that much of the caravan route has been shifted from the Libyan to the Algerian side of the boundary. Aside from this, the new line had the effect of switching two wells located about 40 kilometres south of Ghadamès, from the Libyan to the Algerian side of the boundary; and they placed the entire Edjelé oil field, where substantial oil was found in 1955, on the Algerian side of the boundary.

5.490 It is not necessary to go further into these two rectifications of the 1919 boundary on the western side of Libya. Any difficulties that exist either have or will be taken up directly by Libya with the State concerned. What these divergences show, however - and this is relevant to the present territorial dispute between Libya and Chad - is that, far from respecting the only boundaries of Libya that were delimited by international agreements in force at the time of Libya's independence, namely the boundaries on Libya's western frontier delimited by the 1919 Franco-Italian Accord of 12 September 1919, the French Government in 1955 and 1956 used the presence of French troops on Libyan territory as a lever to force Libya to accept the boundary rectifications that France wanted in this sector. In doing so, France disregarded the very standard it had proposed in Article 3 of the 1955 Treaty: that the boundaries were those that emerged from the "actes internationaux" in force at the time of Libya's independence. The Accord of 12 September 1919 was one of those "actes" listed in Annex I, and France hastened to have the boundary delimited in this Accord changed in two respects, as just noted.

(e) Ratification of the 1955 Treaty

5.491 The delay in the exchange of instruments of ratification until 20 February 1957, more than a year and a half after signature, was the result of serious misgivings in France over whether to ratify the Treaty. The "projet de loi" authorizing the Treaty's ratification was not even presented to the Assemblée Nationale until 13 November 1956, some 15 months after signature[536]. This delay gave rise to a certain number of difficulties. For according to Article 1 of the Convention joined to the Treaty that dealt with the evacuation of Fezzan, French troops were to leave within 12 months of signature but no later than 30 November 1956.

5.492 The ratification came at another difficult time for France. The Suez crisis had intervened, with the landing of French and British troops in Egypt. At the same time, France had increased its war effort in Algeria in its battle against the National Liberation Front, and this incurred the further hostility of the members of the Arab League.

5.493 The debates over ratification in the French Parliament shed light on the meaning of the Treaty's provisions concerning the frontiers. In the course of his report on behalf of the Defense Committee of the Union Française, M. Georget specifically brought up the matter of boundaries[537]. He noted that the Committee's recommendations had not been followed in Annex I of the Treaty concerning certain parts of the Ghat-Toummo boundary. However, he also noted that the Treaty provided for arbitration if problems of demarcation arose and, hence, that there still remained the possibility of negotiations over the boundary.

5.494 In his analysis of the texts submitted to the Parliament, M. Jacques Soustelle said the following:

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[536] J.O.R.F. Documents Parlementaires, Assemblée Nationale, 13 novembre 1956, pp. 426-431. Exhibit 75.

[537] J.O.R.F., Assemblée de l'Union Française, 20 novembre 1956, p. 1051. Exhibit 76.

> "Dans un ensemble assez vague que constituent les textes soumis à notre appréciation, il y a tout de même quelque chose de très précis, c'est l'évacuation du Fezzan - on pourrait même dire que c'est la seule chose précise ...[538]".

M. Soustelle also drew attention to a declaration of Libyan Prime Minister Ben Halim on 14 October 1955, as quoted by Agence France-Presse:

> "Le traité franco-libyen est un accord d'évacuation pur et simple qui n'engage en rien la Libye".

M. Soustelle posed this question in the light of this declaration:

> "On en vient à se demander, dans ces conditions, si le traité qui est soumis aujourd'hui à nos suffrages n'a pas été violé avant même d'être définitivement conclu"[539].

5.495 Proceeding further in his analysis of the Treaty, M. Soustelle expressed concern over the reference in Annex I to the French-Italian Agreement of 12 September 1919 in respect of the Toummo-Ghat segment of the boundary, which now was to be rectified. For the matter was to be left to a mixed commission and possibly to arbitration. Did this mean, he asked, that the boundary in this area was to remain that set out in the 1919 Agreement, which had not been followed in practice? The tenor of these remarks leaves no doubt that in his mind rectification of the 1919 delimitation was intended to be carried out in this segment of the boundary.

5.496 Then Maurice Faure (Minister of Foreign Affairs) explained the Treaty to the Assemblée Nationale. This is what he said about Libya's boundaries:

> "J'en arrive à la question de la frontière. Le problème de sa fixation, nul ne l'ignore, a été particulièrement complexe dans cette région. Différents textes pouvaient, en effet, être invoqués, qui avaient plus ou moins une valeur juridique.
>
> Le problème vient d'être simplifié et mis au point. En ce qui concerne la frontière Sud, tout d'abord, la Libye renonce à se prévaloir des stipulations qui lui étaient favorables de l'accord de

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[538] J.O.R.F. Débats, Assemblée Nationale, 1ère séance du 22 novembre 1956, p. 5020. Exhibit 71.

[539] Ibid., p. 5023.

> 1935 connu sous le nom d'accord Laval-Mussolini. Nos droits sur le Tibesti sont, par conséquent, définitivement sanctionnés[540]."

5.497 In other words, according to M. Faure, the Treaty would remove the cloud over French title emanating from the 1935 Treaty. This, of course, was a statement of the French "thesis". Moreover, it ignored totally what the French Government had said in 1935 to the French Parliament in the Exposé des motifs accompanying the draft law to authorize ratification of the 1935 Treaty[541]. Those listening to M. Faure no doubt were under the impression that Libya had explicitly renounced the 1935 Treaty, not that the so-called "renunciation" had been brought about by sleight of hand: by leaving the 1935 Treaty off the list of "actes internationaux" in Annex I to the Treaty.

5.498 M. Faure then moved on to talk about the Ghat-Toummo sector of the Libyan boundary, which he said had been largely resolved to the satisfaction of the French military in Annex I, once again a clear reflection that a rectification of the boundary was involved there. Turning to the portion of the boundary south of the Ghadames, he noted its importance in the light of the Edjelé oil field. He predicted that the negotiations over that sector then in progress would end satisfactorily. But he added:

> "D'ailleurs, le Gouvernement prend l'engagement de ne déposer et de n'échanger les instruments de ratification du traité que lorsqu'il aura des garanties précises et définitives sur la fixation de la frontière entre la France et la Libye. Il accepte donc à l'avance l'amendement que M. Isorni vient de déposer sur le bureau de l'Assemblée[542]."

5.499 The Isorni amendment referred to by him, which was promptly adopted (433 votes in favour of the amendment, 150 votes against), added the following article to the proposed law authorizing ratification:

> "Les instruments de ratification seront déposés lorsque sera intervenu l'accord fixant la frontière entre le Royaume-Uni de Libye et l'Algérie[543]."

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[540] Ibid., p. 5025.

[541] See, para. 5.333, above.

[542] J.O.R.F. Débats, Assemblée Nationale, 1ère séance du 22 novembre 1956, p. 5025. Exhibit 71.

[543] J.O.R.F. Débats, Conseil de la République, séance du 29 novembre 1956, p. 2365. Exhibit 77.

Thus, it is evident that M. Faure's commitment was only to cover the Algerian segment of the boundary - for it concerned metropolitan France.

5.500 During the last day of Parliamentary debates (29 November 1956), M. Faure again took the floor before the Conseil de la République. He devoted quite a few words to the boundary question[544]. The following are extracts from what he said at that time:

> "Je voudrais ici éclaircir un petit point d'histoire. C'est au début de l'année, lorsque le Gouvernement est entré en fonction, que nous avons amorcé la négociation sur la fixation de la frontière, mais vous savez que, dans le monde international, les choses ne vont pas toujours aussi vite que nous le voudrions. C'est en juin que nos experts devaient se rendre à Tripoli. Que s'est-il passé? Il s'est passé ... que la Libye n'avait pas d'expert, qu'elle a dû en chercher en Suisse, et qu'au dernier moment, cet expert s'est trouvé indisponible[545]."

What M. Faure was talking about, of course, were the negotiations to rectify Libya's boundary with Algeria, subsequently incorporated in the 1956 Agreement. He went on to discuss the subsequent difficulties in accomplishing this task before the deadline of 30 November 1956 for the evacuation of Fezzan, saying the following:

> "Si, du plan de la haute politique, nous voulons maintenant descendre dans le plan concret, le motif pour lequel nous vous demandons de ratifier le traité, c'est précisément pour permettre d'aboutir à un réglement favorable de la question frontalière.
>
> Je sais et je voudrais tout de suite le dire à M. Debré, qu'en vous demandant cette ratification, je n'ai pas la possibilité, à l'heure où je vous parle, de vous dire que j'ai la certitude que nous aurons ce que j'appellerai une bonne frontière, mais, par contre, si vous ne ratifiez pas, nous sommes sûrs d'en avoir une mauvaise[546]."

Once more, M. Faure was referring to the frontier with Algeria.

5.501 A few minutes later, M. Faure returned to the matter of the boundary in another, rather long statement:

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[544] Ibid., pp. 2364-2365.

[545] Ibid., p. 2364.

[546] Ibid.

"Je voudrais maintenant aborder le problème de la frontière et dire qu'il se présente sous un aspect éminemment complexe pour deux raisons: une raison géographique et une raison diplomatique ou historique.

La raison géographique, c'est que nous ne sommes pas dans un pays semblable à nos vieux Etats européens où l'implantation humaine est extrêmement dense et serrée et où l'on suit à quelques mètres près le tracé de la frontière. Nous sommes dans une région où le tracé de la frontière est fixé par référence à des points, des oasis, des passages géographiques naturels, distants parfois les uns des autres de plusieurs centaines de kilomètres et il est incontestable que l'imprécision est dans la nature même des choses. Mais *cette imprécision est aggravée parce qu'au point de vue historique et diplomatique on peut faire référence à plusieurs textes qui sont, sinon contradictoires, du moins successifs et imprécis*, ce qui ouvre évidemment toute grande la porte à un contentieux et à un arbitrage international dont il est difficile de dire à l'avance dans quel sens il se prononcerait[547].

Je prétends que sur ce point, si important, de la fixation de la frontière, le traité nous apporte d'abord un apaisement, ensuite un espoir.

Un apaisement, en ce qui concerne la fixation de la frontière méridionale où il est prévu qu'entre Ghât et Toummo la frontière limitrophe entre le Fezzan et l'Afrique occidentale française sera fixée par référénce à trois points géographiques demandés précisément par la France.

Apaisement aussi en ce sens que le traité stipule l'abandon définitif par la Libye des prétentions qu'à l'époque de Mussolini, et en vertu des accords signés avec Pierre Laval, l'Italie avait pu faire valoir sur la région du Tibesti[548].

Mais le traité nous apporte aussi un espoir, celui de voir régler favorablement à nos intérêts le problème de la frontière entre la Libye et l'Algérie. C'est ici que je reviens aux propos que je vous tenais tout à l'heure. Deux points sont importants: le premier, est celui du massif pétrolier d'Edjelé et de l'aérodrome de Maison-Rouge; le second, celui de la piste qui suit la bordure orientale du massif des Adjer.

J'ai dit à l'Assemblée nationale, et je répète ici en fonction de renseignements qui m'ont été confirmés dans les tout derniers jours, que le Gouvernement avait bon espoir - je ne peux pas en dire davantage - d'obtenir satisfaction sur ces deux points.

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[547] *Ibid.*, p. 2365. (Emphasis added.)

[548] As noted above, neither Article 3 nor Annex I of the 1955 Treaty contained any referenc to the 1935 Treaty, let alone an express repudiation of it; so it is a considerable exaggeration to refer to "l'abandon définitif par la Libye". It has also been noted that th 1935 Treaty was not the only one of the "actes internationaux" left off the list.

> En tout cas, si, par votre vote tout à l'heure, vous nous permettez de ratifier le traité, je demanderai demain matin à l'un de mes collaborateurs de partir pour Tripoli afin d'accélérer au maximum le règlement frontalier, étant donné que désormais la Libye n'aura plus à nous objecter précisément ce prétexte du refus français de ratification et que nous aurons mis de notre côté le bon droit."

5.502 M. Faure's main preoccupation was with the frontier with Algeria. But his statement contains an admission that the various relevant agreements were contradictory, overlapping and imprecise. He appeared to water down considerably the French "thesis" that getting rid of the ghost of the Laval-Mussolini Treaty of 1935 would restore the 1899-1919 boundary alleged to apply, for he used the term "apaisement", hardly the word to use to indicate a definitive resolution of a boundary.

5.503 After the adoption of the proposed law authorizing the ratification on 22 November 1956 in the Assemblée Nationale (411 votes to 120) and on 29th November in the Conseil de la République (196 votes to 92), the law authorizing the President to ratify the Treaty and its agreements and annexes was promulgated on 6 December 1956[549]. In closing this discussion of the 1955 Treaty, it is necessary to point out that the Treaty was entered into by Libya under conditions of duress and on the basis of misrepresentations by France. French forces were in occupation of large areas of Libya at the time and refused to leave until an arrangement satisfactory to France was signed. Then, a second condition was imposed: that the boundary between Libya and Algeria delimited in 1919 be rectified by a separate agreement before the 1955 Treaty would be ratified by France. Thus, the part of the 1955 Treaty that fixed a boundary - the sector between Toummo and Ghat dealt with in Annex I - was agreed under duress. This part of Libya's boundary does not, however, concern territory in dispute in the present claim between Libya and Chad. Regrettably, the whole boundary question was obscured by the misrepresentations made by France as to the effect of the "actes internationaux" in force in 1951.

(f) The Failure of the French Government To Register the 1955 Treaty Under Article 102 of the United Nations Charter Until 1991

5.504 In Part II above, the conduct of the French Government in failing to take steps to have the 1955 Treaty registered under Article 102 of the

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[549] Loi n° 56-1235 du 6 décembre 1956, J.O.R.F., 7 décembre 1956, p. 11680. Exhibit 78.

United Nations Charter, until early 1991, was touched on, based on information that has come to Libya's attention. Hopefully, a full elucidation of the matter will appear in Chad's Memorial and the relevant documents will be produced.

5.505 Libya understands that the text of the Treaty was furnished to the United Nations Secretariat sometime in 1960 in order that it be registered under Article 102, but that in so doing all of the requirements to effect registration were not satisfied. It is further understood that when informed by the Secretariat that until certain additional documentation was furnished the Treaty would not be registered under Article 102, the French Government took no further action to permit registration.

5.506 Libya has been informed that in 1972 the Secretariat again reminded the French Government that the 1955 Treaty had not been registered under Article 102 due to the insufficiency of the documentation furnished by France. Notwithstanding this reminder, it appears that the French Government took no action at that time, either, to permit the registration of the Treaty. However, after the notification of the Accord-Cadre, upon the request of the Government of Chad, it is understood that France finally did take steps to permit the Treaty's registration under Article 102 to be made. Libya has been informed that this was on 26 February 1991 - over 34 years after the Treaty had been signed and six months after the commencement of this case!

5.507 This conduct serves to confirm the conclusions set out above concerning the intended scope and effect of the 1955 Treaty. It will be recalled that the Treaty had a limited term (20 years); thereafter, it could be terminated by either Libya or France upon one year's notice. One is struck at once with the inappropriateness of using an instrument of this kind as a vehicle for establishing a permanent international boundary, let alone a subsidiary basis of jurisdiction. As has been seen, the 1955 Treaty was not intended to serve such a purpose insofar as the boundary between Libya and Chad was concerned[550].

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[550] Article 11 of the 1955 Treaty provided that consultations between the parties with a view to its revision could take place at any time; at the end of 10 years, such consultations became obligatory. Thus, consultations should have occurred after 20 February 1967 (10 years after the Treaty's effective date) and the Treaty could have been terminated after 20 February 1977 (20 years after its effective date). None of these events occurred, and the Libyan presence in the borderlands, which Chad alleges to have begun in 1971, provoked neither consultation nor termination. These facts reinforce the evidence of the French Government's indifference to the 1955 Treaty that the history of its failure to have it registered under Article 102 of the U.N. Charter demonstrated.

5.508 Nevertheless, France (and now Chad) have relied on the 1955 Treaty as having settled the boundary. Yet it is very difficult to understand how a Treaty that both France and Chad claim had somehow resolved the question of where Libya's southern boundary lay could be treated in such an offhand fashion by the French Government - in 1960 and again in 1972, and thereafter until, apparently at Chad's request, France finally acted to try to remedy its registration submission in early 1991, after this case was already before the Court.

5.509 France's conduct in relation to the 1955 Treaty is all the more striking when its actions in relation to the 1956 Agreement, modifying the Libya-Algerian boundary established in 1919, are considered. For this Agreement really did pupor to establish an international boundary. The 1956 Agreement had been entered into on 26 December 1956. It was promptly filed by the French Government with the Secretariat for registration under Article 102 - with no slip ups this time - the registration taking effect on 19 May 1958, two years before the 1955 Treaty was half-heartedly furnished to the Secretariat for registration[551].

5.510 Not only did the 1956 Agreement establish a boundary; it had the effect of moving the Edgelé oil fields onto Algerian territory. So, although Annex I of the 1955 Treaty also modified part of the 1919 boundary, it did so in an area of no special importance to France, and in any event not in a sector that concerned Chad. It cannot be seriously considered, therefore, that the 1955 Treaty was intended to establish a boundary east of Toummo or to do more than to set certain ground rules for a future delimitation, which in the event has never taken place.

(g) Other Contemporary Events

5.511 Several events occurring around the same time as the signing of the 1955 Treaty and its ratification deserve to be mentioned in connection with it. These were: (i) the Moya incident; (ii) the incident relating to the proposed Anglo-Libyan manoeuvres near Tibesti; (iii) the discovery of oil, and (iv) the issuance by Libya of its 1955 Petroleum Law.

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[551] It was given the registration number 4340.

(i) The Moya Incident

5.512 This incident, which took place on 28 February 1955, in between the two phases of the negotiations between Libya and France, has been described this way by Bernard Lanne:

> "Peu après éclata l'incident de Moya qui prouva que la Libye continuait de contester les frontières[552]. Le 28 février 1955, un groupe de trois jeeps transportant en tout dix-neuf personnes dont un officier, un caporal et onze soldats libyens, fut arrêté à Moya au nord d'Aozou par le poste français. Le sous-officier français commandant le poste invita les Libyens à regagner la frontière. Le chef de la mission libyenne demanda à voir le chef de poste d'Aozou à qui il annonça qu'il avait mission de recenser la population et de la faire visiter par un médecin. Ce dernier, le Dr. Chanawani, un Egyptien spécialiste des Nations Unies pour le recensement, montra une carte italienne qui portait Aozou en territoire libyen. Les Libyens restèrent un quart d'heure à Aozou et furent reconduits à la frontière sans incident. Les troupes libyennes escortaient une mission civile[553]."

5.513 Lanne reports that official French protests were lodged in Tripoli after the incident and that the Director of the United Nations aid mission in Libya paid a visit to the French delegation in Tripoli to apologize. It must be said that there was really nothing to apologize about. The boundary in the area had not been delimited, and the recommendation that this be done contained in Resolution 392(V) had yet to be dealt with. Moreover, United Nations maps issued at the time showed a line that resembled the 1935 line not the 1919 line. On these maps Aouzou (and Moya) were located on Libyan territory, although the maps contained the customary disclaimer as to the authenticity of the boundaries shown[554]. As noted above[555], U.S. Ambassador Villard's book written in 1956 included a map that showed a boundary similar to that appearing on the United Nations maps.

5.514 The French reaction to this incident may be found in a memorandum dated 12 April 1955 prepared by the Ministère d'Outre-Mer analysing the Moya incident[556]. The opening paragraph of this document reads as follows:

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[552] Referring to the January 1955 negotiations in Paris. Footnotes deleted.

[553] Lanne, B.: Tchad-Libye: La querelle des frontières, op. cit., p. 210. (A copy of this page is attached as Exhibit 45.)

[554] See, the reproductions of four U.N. maps appearing at the end of Chapter I of this Part.

[555] See, para. 5.408, above.

> "L'incident d'Aozou est l'expression de visées anglo-saxonnes d'ordre économique, s'appuyant sur des revendications libyennes d'ordre territorial favorisées par l'imprécision de notre frontière."

This brings out not only the French Government's economic interests in the region but also its lack of certainty regarding the boundary. The Governor-General of the A.E.F., in his letter dated 2 May 1955 already discussed above in regard to its bearing on the meaning of Article 3 of the 1955, also referred to this incident and mentioned the possible economic value of this region:

> "La récente mission d'exploration géologique au Tibesti a révélé, précisement dans la région d'Aouzou, des indices qui permettent de supposer l'existence de minerais divers et notamment de gisements uranifères[557]."

5.515 The analysis of the Ministère d'Outre-Mer of 12 April 1955 tied the Moya incident to an earlier one. For it recounts that the Libyan Foreign Minister in September 1954 approved a plan of the Waly of Cyrenaica to occupy Aouzou. The note says that the French Minister in Tripoli did not learn this until 15 February 1955, saying:

> "Le Ministre de France à TRIPOLI n'en était informé que le 15 Février 1955 et, réfutant l'argument libyen que Les nomades avaient déclaré que les autorités françaises avaient abandonné la localité après avoir précisé aux habitants qu'ils devaient désormais se considérer comme nationaux libyens, demandait au gouvernement Libyen d'inviter les autorités cyrénéennes à renoncer à leur projet.
>
> En dépit de ces 'représentations', une mission libyenne se présentait le 28 février 1955 au poste d'Aozou, occupé par nos forces[558]."

The note goes on to describe the Libyan party that arrived at Aouzou a little more fully than Bernard Lanne did in the passage from his book quoted above. This description begins with the composition of the Libyan mission.

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[556] See, Note d'information of 12 April 1955, French Archives Annex, p. 166.

[557] Letter of 2 May 1955, French Archives Annex, p. 171.

[558] Note d'information of 12 April 1955, French Archives Annex, p. 166.

> "Elle comprenait:
>
> - Le Commissaire de KOUFRA
> - 1 Officier et 15 policiers libyens armés (dont 3 Toubous de KOUFRA)
> - 1 Médecin
> - 1 agent recenseur des services de l'O.N.U., spécialiste des questions de referendum.
>
> Le Secrétaire Libyen à l'Intérieur devait, primitivement, faire partie de l'expédition.
>
> La présence de Toubbous était d'autre part significative, si l'on tient compte des rumeurs concernant l'intention qu'auraient les Toubbous d'A.E.F. de se réclamer de l'Etat-Libyen.
>
> Une protestation Officielle était faite le 4 Mars par le Ministre de France.
>
> L'entreprise est donc stoppée dans l'immédiat[559]."

5.516 This French analysis then proceeded to set out evidence said to confirm the "indiscutables visées anglo-saxonnes sur" the Fezzan-A.E.F. frontier area, particularly the activities of oil companies. It concluded that -

> "... le raid Libyen sur Aozou prenait donc volontiers figure d'un essai pour juger nos réactions et comme le premier acte d'une épreuve où les prétentions libyennes auraient été non plus appuyées par un agent de l'O.N.U. mais par un bataillon britannique."

The latter reference refers to the proposed joint Libyan-British manoeuvres to be discussed in the next section. The note also concluded that there was, unquestionably, collusion between the Libyans and the "Anglo-Saxons" -

> "... sur les revendications territoriales Libyennes que rend possible l'imprécision de notre frontière."

It was urged that the frontier be fixed urgently "par un texte formel".

5.517 This internal dispatch suggests that the French Government may have been far less certain regarding the existence of a conventional boundary along the southern frontier of Libya than the Government's outward demonstration of confidence in the French "thesis" suggested. This same insecurity is reflected in the next incident. Both incidents, it should be noted, occurred while the negotiations between Libya and France leading to the 1955 Treaty were underway. The Moya incident is of significance for another reason: it was at this time - not in 1971-1972 - that the government of newly independent Libya first took steps to install the machinery of Government in the Libya-Chad borderlands. But French military forces resisted this initiative; and for Libya it was not possible to force the issue at the time with the French forces occupying this area.

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[559] Ibid.

(ii) Anglo-Libyan Manoeuvres Near Tibesti

5.518 In the mind of the French Government this next incident was connected with the Moya incident and was also indicative of Anglo-Saxon - Libyan collusion against France. What had been planned by the British, as reflected in a Foreign Office dispatch of 16 May 1955[560], was a routine manoeuvre to give experience in desert conditions. The party was to consist of about 300 men, including some Libyans, and 100 vehicles. The following is the Foreign Office account of what transpired:

> "Briefly, the French Embassy some little time ago came to us and said that they had heard that we were sending a small body of men down to the south of Libya on manoeuvres this summer, with vehicules. In view of the delicacy of Franco-Libyan relations and some uncertainty about the southern frontier of Libya, they would be grateful if we could so arrange it that this party did its manoeuvring elsewhere. We spoke to the War Office who said that they could arrange for the party not to go nearer to the Tibesti mountains than some 80 or 90 miles. The French Embassy however, came back to us and said that this would still present them with difficulties, particularly if there were any Libyans in the party, since the presence of the party in the southern part of the Fezzan would any way be awkward. They made it clear that they were only concerned about this year[561].
>
> We thought it rather much that the French should continue to press us about this since it is our responsibility to defend Libya but we went to the War Office again who have now agreed that the party should proceed from Tripoli ..., with a place called Bzema, about 100 kilometres northwest of the Kufra Oasis, as its objective. On this route the party will not pass closer to Sebha (Fort Leclerc) on the northeast, than about 180 kilometres.
>
> ... We conveyed our decision to the French Embassy orally rather than in writing as we felt disinclined to go formally on record about

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[560] Emphasis added. See, Bromley-Beith letter of 16 May 1955, FO 371/113893, British Archives Annex, p. 317.

[561] At the time, French troops occupied Fezzan but were to depart within a year.

> the change of a plan which we had a perfect right to make and we thought that it might be awkward with the Libyans if by any mischance some written communication which we had made were to leak out. But we agreed to meet the French because we felt that this was one small matter on which we could show our willingness to be helpful."

5.519 Like the Moya incident, this affair suggests a rather different internal assessment by the French Government as to Libya's southern boundary at the time than the attitude of confidence outwardly portrayed. It also was another illustration of Libya's attempts, against French military resistance, to install Libyan administration in the borderlands.

(iii) Discovery of Oil

5.520 Except for the Edjelé field, oil was not found in Libya in commercial quantities until 1961. The Edjelé discovery has been described in this way by one oil expert:

> "At the end of 1955 substantial oil was found at Edjele, in Algeria, contiguous to the Libyan border. This directed attention to the area of Libya next to this border, and Concession No. 1 was granted to Esso Standard Libya covering this part. The first drilling operations, begun in 1956, were carried out by Libyan-American in northern Cyrenaica and by Esso in Western Libya. The former drilled three dry holes, and the latter, though finding some oil, adjudged it far too insignificant to justify commercial development in view of the logistics of this far-away place of difficult terrain even for the Libyan desert[562]."

The above passage from this book written in 1980 assumed the Edjelé field to lie in Algerian territory, and this was indeed the effect of the 1956 Agreement. Libya considers, however, that the shift of this field to Algeria was the result of a rectification of the 1919 delimitation. What the passage quoted above indicates is that on the post-1956 Libyan side of the boundary oil did not materialize - it was all on the Algerian side.

5.521 Libya considers this rectification to have been agreed between Libya and France on the basis of incorrect maps made available to the commission, a matter that has been raised with Algeria. Any dispute relating to this rectification, however, is not before the Court in the present case.

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[562] Waddams, F.C.: The Libyan Oil Industry, London, Croom Helm Ltd., 1980, p. 29. (A copy of this page is attached as Exhibit 79.)

Nevertheless, this example illustrates how fragile the principle of respect for Libya's boundaries at the time of its independence proved to be when important economic considerations intervened.

5.522 The British Foreign Office records contain a few dispatches of interest concerning the matter. On 17 July 1956, the French Minister in Tripoli visited the British Embassy there. He was reported to have said that "immense quantities of oil" had been discovered along the "old 1919 Franco-Italian line", making the delimitation of the frontier very urgent[563]. In October 1956, the British Ambassador in Tripoli reported a conversation with Libyan Prime Minister Ben Halim in which the latter had said the following concerning the 1956 negotiations then in progress:

> "The French had hinted that if the Libyans were helpful over the frontier question, they in their turn would make no difficulties over the evacuation. But this would be submitting to blackmail, and Libya held that the two questions were entirely separate. The frontier question must be dealt with on its merits[564]."

5.523 Thus, the discovery of oil in this sector of the boundary was a prime factor affecting both ratification of the 1955 Treaty and the location of the boundary fixed in the 1956 agreement.

(iv) Issuance of the 1955 Petroleum Law by Libya

5.524 Libya issued its first Petroleum Law on 21 April 1955. It was published in the Official Gazette of Libya on 19 June 1955, that is, almost two months prior to signature of the 1955 Treaty. Petroleum Regulation No. 1 issued under this Law was promulgated on 16 June 1955 and published in the Official Gazette on 14 August 1955, four days after the Treaty's signature.

5.525 Article 1 of Petroleum Regulation No. 1 provided as follows:

> "There shall be an official map of Libya for the purposes of the Petroleum Law 1955 to a scale of 1:2,000.000, called Map No. 1, which is attached as the first Schedule hereto. On this map the

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[563] See, Aubrey-Watson Dispatch, 17 July 1956, FO 371/119718, British Archives Annex, p. 339.

[564] Dispatch of 30 October 1956, FO 371/119718, British Archives Annex, p. 343.

> international frontiers, petroleum zones and the grid shall be indicated[565]."

Published in the Official Gazette 14 August 1955 along with the Regulation was the official map, Map No. 1, which has been reproduced here together with its cover page (Map Nos. 96 and 97). The line shown on the map for the southern boundary of Libya did not accord at all with the 1899-1919 line espoused by France but resembled the line shown on United Nations maps, although on such a small scale (1:2,000,000) the line is only a general approximation of a boundary line.

5.526 The significance of the publication of this map at this rather critical moment is two-fold: (i) had Libya considered that four days before, in signing the 1955 Treaty, it had accepted the 1919 line for its southern boundary, the official map would not have portrayed the line it did; and (ii) the fact that the French Government did not protest or comment on this map, which certainly came to its attention in the light of the intense interest France had in oil prospects in the region, is a further indication of the fact that it was the western boundary of Libya that concerned the French Government and that Libya's southern boundary was intended to be dealt with separately and subsequently[566].

SECTION 2. The Events Between 1957 and 1977: Chad's Independence in 1960, and the Complaint Brought by Chad before the Organisation of African Unity (OAU) in 1977

5.527 The 1956 Suez crisis had several effects of relevance here. Libya had supported Egypt; and as a result it sought (and obtained) assurances that troops stationed in Libya were not being used in that conflict against Egypt. This event started the trend to seek the evacuation of all foreign troops from Libya.

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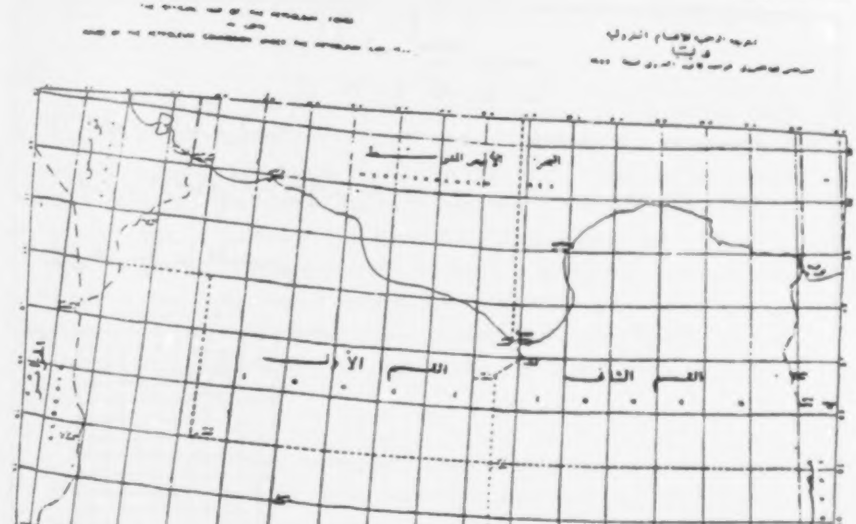
[565] Petroleum Regulation No. 1 of 16 June 1955. The Official Gazette of the United Kingdom of Libya, No. 7, 14 August 1955 - 25 Thul Hidjah 1374, Vol. V. (A copy of the Regulation as translated from arabic and official map are attached as Exhibit 80.)

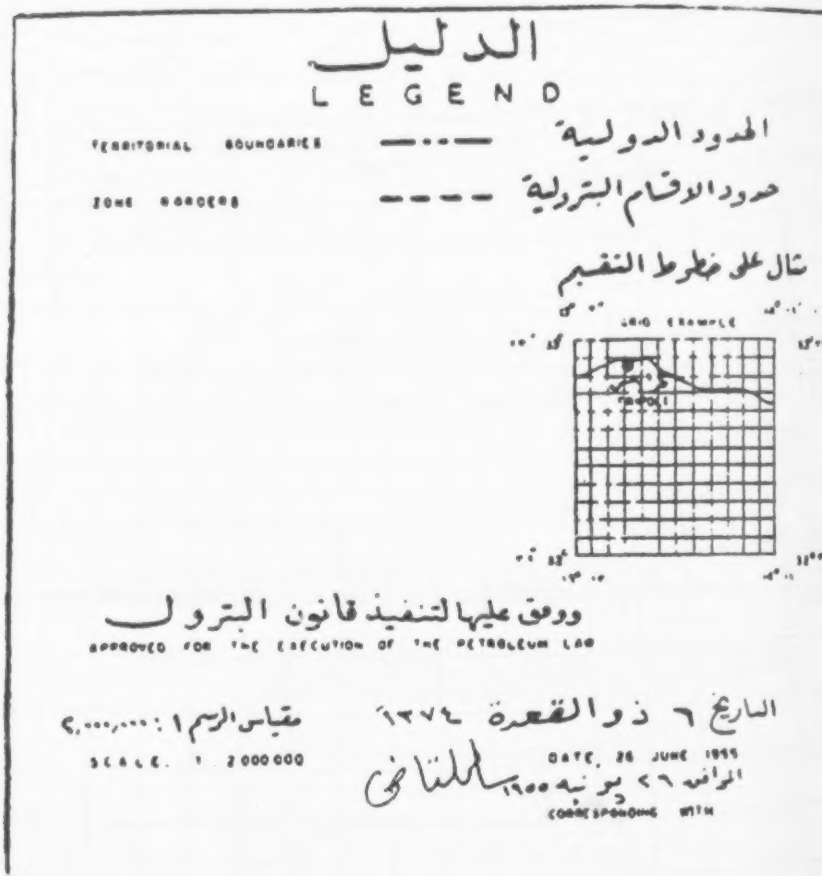
[566] The intense interest the French Government took in 1930 in the map appearing in the Italian Atlas used in Italian schools at the time (see, paras. 5.275-5.276, above) contrasts sharply with the apparent lack of concern on the part of the French Government in 1955 over Libya's official petroleum map. The map itself bears the signature of a Minister of the Libyan Government.

Map No. 96



Source: Official Gazette of Libya, 14 August 1965, Map 91.

Map No. 9



Source: Official Gazette of L
14 August 1955, Ma

5.528 A second effect of the crisis was to generate increased interest in oil exploration in areas lying west of Suez. This led to the acceleration of exploration activity in Libya.

5.529 Also affecting the question of frontiers was the fact that, although French troops withdrew from Fezzan in 1956, they were not evacuated from Chad and the Libya-Chad borderlands until 1965. Therefore, the French troops stationed in the Libya - Chad borderlands were on territory, the attribution of which, either to the French A.O.F. and A.E.F. (and subsequently to Chad) or to Libya, had never been determined by international agreement. As a result, just as when French troops were in Fezzan, there was little incentive on the part of France (or Chad) to try to define these frontiers at the time. But the French presence there was inhibiting for Libya, which was in no position to have a confrontation with France.

5.530 Along the western frontier of Libya there occurred a series of border incidents with the French after 1956. Since they have only a limited relevance to the Libya-Chad territorial dispute, and since they relate more to boundary questions that may exist between Libya and Algeria, these incidents have not been further discussed here.

(a) Independence of Chad

5.531 It is unnecessary to go into any of the detail concerning the path that led to Chad's independence. Chad adopted its first Constitution on 31 March 1959. In the legislative elections that followed, 85 Deputies were chosen, only two of whom represented the area comprising Borkou, Ennedi and Tibesti, or what Chad refers to as the "B.E.T.".

5.532 Chad was proclaimed an independent State on 11 August 1960. The differences between Libya and Chad at the time each became an independent State has been discussed above in Part I. Even apart from these great differences, Libya at the time of its independence was a very different State from the French territory that became Chad. The contrast has been described in this way:

> "Libya at independence in 1951 was a federation of three disparate and impoverished territories belonging neither to the Arab Mashriq from Egypt eastwards, nor to the Arab Maghrib from Tunisia westwards. But Cyrenaica, Tripolitania and Fezzan, in their uneasy

> union under the Sanusi crown, at least had the advantages of a common Arab or Arab-Berber heritage and a near-universal acceptance of Islam, the Arabic language and of Arab culture. A certain sense of nationalism had been gained during the anti-colonialist struggle and national unity was in due course consolidated through the inflow of oil revenues and their more or less even distribution among the population.
>
> Chad in 1960 was, by contrast, an artificial by-product of French political and strategic priorities elsewhere, brought into being largely because its constituent territories filled the 'left-over spaces' between the three wings of the French empire in Africa. So long as the French were in control, Chad had a certain enforced cohesion; but the divisions and tensions between inherently incompatible peoples and cultures were still apparent. The most obvious divide was between a nomadic-pastoral Muslim north and centre and a settled animist-Christian south. While not originally responsible for such divisions, France exploited rather than ameliorated them[567]."

5.533 There were no declarations made at the time of Chad's independence regarding its boundaries nor was the matter broached in the new Constitution adopted by Chad in 1962. In the 1962 elections, M. Tombalbaye was elected President and Chief of State.

(b) The 1960 and 1964 French Military Agreements Relating to Chad

5.534 A four-party defense agreement (France, Chad, Central Africa and Republic of Congo) was entered into in 1960 concerning their defense[568]. France undertook to provide the aid necessary for the constitution of the armed forces of the signatory States, and France was assured of free use of military bases there. In presenting the views of the Committee on National Defense and the Armed Forces regarding this agreement to the Assemblée Nationale on 12 November 1960[569], M. Bourgund described the general situation in Chad, with whose defense this agreement was concerned, in the following way:

> "Le Tchad, pays le plus peuplé d'hommes dont les capacités physiques en faisaient le réservoir du recrutement pour l'armée et

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[567] Wright, Libya, Chad and the Central Sahara, op. cit., p. 127. (A copy of this page is attached as Exhibit 16.)

[568] See, Four-Party Agreement of 12 July 1960, International Accords and Agreements Annex, No. 30.

[569] J.O.R.F., Documents de l'Assemblé Nationale, Annexes aux Procès Verbaux des Seances, 1ère session ordinaire de 1960-61, Séance du 12 novembre 1960, Annexe No. 949, pp. 1062-1063, Exhibit 81.

> les grands travaux, est coupé en deux par la religion et par le désert de sable, en trois par les races.
>
> Au Nord et à l'Est se trouve un groupement islamisé de près d'un million d'hommes, le Sud et l'Ouest - aux densités de population plus fortes - étant tenants de l'animisme et des religions chrétiennes.
>
> Il existe, au Nord, un groupement racial, les Toubous, nomades dont la zone de déplacement couvre, certes le Borkou, l'Ennedi et le Tibesti mais aussi le Nord du Niger, le Fezzan et la Cyrenaique. Son pôle d'attraction commercial et religieux est en Cyrenaique, à Koufra et peut même être recherché jusqu'à Djaraboud.
>
> Au Sud, par contre, un groupe noir, les Saras, habite la forêt savane qui couvre le Moyen-Chari et le Logone. De ce groupe est issu le parti actuellement au pouvoir.
>
> Au Centre, une vaste bande sahélienne, à cheval sur les 13° parallèle, relie le Nord du Cameroun au Sudan. Elle est de ce fait l'objet de sollicitations inspirées par les maîtres du Commonwealth qui voudraient relier le Nigéria au Sudan et appuyées par des arguments d'attraction économique très sérieux[570]."

After making these remarks, M. Bourgund concluded that each of these States had its own special defense concerns, saying:

> "Le Tchad a les yeux fixés sur le Soudan dont l'armée est relativement forte et pourrait appuyer la subversion de la Ligue arabe, mais aussi vers le Nord orienté vers la Cyrenaique ainsi qu'on l'a vu précédemment ...
>
> Je ne serais pas complet si j'omettais de mentionner enfin que des désordres peuvent survenir dans chaque Etat, qui appelleraient l'intervention d'un ou plusieurs autres Etats.
>
> Ceci implique que la France, régulatrice des forces d'intervention dispose de bases solides dans chacun de ces Etats. Il y a tout lieu de penser que les bases existantes seront maintenues ou déplacées en fonction des impératifs stratégiques.
>
> C'est en tout cas ce qui ressort de la lecture des textes signés, mais on aurait pu souhaiter plus de précision dans leur définition."

He added:

> "C'est pourquoi, fort de l'appui unanime de la commission, je rappelle ici celles de nos conclusions qui se rapportent à l'Afrique équatoriale.
>
> L'implantation qui figurera dans les accords doit faire état:

---

[570] Ibid., p. 1061.

> - des bases d'importance stratégique et tactique;
> - des bases de couverture frontalière;
> - des bases de transit.
>
> Pour l'ensemble Tchad-République centrafricaine, la base stratégique et tactique doit être, sans conteste, Fort-Lamy, adaptée à la fois sur Fort lamy et sur Souar. Mais on ne doit pas négliger - bien qu'il se trouve sur le territoire de l'ex-AOF - le Niger, clé de voûte du dispositif général face au Nord et avec Niamey comme base principale.
>
> Comme bases secondaires aéroterrestres, et bases de couverture, Largeau et ses antennes du Tibesti et de l'Ennedi, et Abéché.
>
> Comme base de transit: Bangui[571]."

5.535 Thus, M. Bourgund's explanation made clear that France's bases in Tibesti, Borkou and Ennedi were of secondary importance, their object being to cover the frontier. The need for such bases is further evidence of the realisation by France and Chad that the frontier was not fixed. Moreover, these defense agreements could provide no legal basis for either France or Chad to maintain military forces there unless Chad had title to the territory concerned. The presence of French forces in the area until 1965, succeeded by the short-lived, nominal military administration of the Chadian Government, was soon displaced by the turmoil of the rebellion and civil war in Chad. Neither the French nor the Chadian military administrations, could have had the effect of changing the situation as to rights and titles existing at the time of Libya's independence.

5.536 In addition to this four-party agreement, France and Chad entered into a military and technical assistance agreement in 1960[572]. It was paragraph 6 of this agreement that later was to be invoked to justify France's subsequent military interventions in the area. However, this Article was quite limited in scope:

> "Les forces armées de la République du Tchad peuvent faire appel, pour leur soutien logistique, au concours des forces armées françaises[573]."

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[571] Ibid., p. 1062.

[572] International Accords and Agreements Annex, No. 31.

[573] Ibid.

The agreement contained an annex concerning the status of French forces stationed on Chadian territory.

5.537 France may have been concerned over Chad's security because of the threat that could be posed to its other former possessions; but Libya's concerns regarding security, in the increasingly unstable conditions that developed after Chad's independence, were far more direct. For the security of Libya's southern frontier was at stake, not that of some far-off, former colonies. The fact that the boundary had never been delimited contributed to the instability of the frontier. Moreover, Libya was concerned over the threat to the security to the indigenous peoples of the borderlands, whose lives and welfare were greatly at risk.

5.538 In 1964, additional agreements entitled "conventions militaires techniques" were entered into between France and Chad. However, in April 1964, the Chadian National Assembly called for the withdrawal of the 3,000 French troops stationed in Chad, and in January 1965 French military administration in the northern half of Chad was nominally turned over to Chadian military administration. In October of 1965, the rebellion in the Libya-Chad borderlands broke out, although it had been simmering ever since the "coupure historique" between north and south on 16 September 1963. This created a new, and potentially dangerous, situation for Libya. For in 1961 Libya had started to produce oil in commercial quantities from fields and facilities lying south of the Gulf of Sirt and north of the Libya-Chad borderlands. In 1966, the Derde of Tibesti (the religious leader of the Toubou) left to such exile in Libya, and by 1968 the full force of the rebellion had hit the Libya-Chad borderlands.

5.539 In the light of these events, the Government of Chad called upon France for assistance, invoking the 1960 agreement with France. France responded and sent a military mission under General Arnaud, which was to operate in Chad until June 1971 and to involve between 2,500 and 3,000 French troops. Thereafter, a cadre of some 600 French troops remained in Chad. France also sent an administrative reform mission (the MRA) to Chad in 1969, the last director of which was M. Claustre, a name that was to become internationally known in 1974 when "l'Affaire Claustre" created a crisis in Franco-Chadian relations lasting until its resolution with the help of Libya in 1977.

(c) The 1966 Libya-Chad Accord

5.540 The 1966 Accord was part of a bundle of economic arrangements made between Libya and Chad. Appropriately, the Accord was signed by Libya's Economic Minsiters[574]. The Accord itself, signed on 2 March 1966, dealt with the same questions as addressed in the Convention de bon voisinage of 1955 between Libya and France, which had been part of the package of agreements accompanying the 1955 Treaty. The 1966 Accord contained no provision purporting to delimit the boundary between Libya and Chad; it made no reference to Article 3 or Annex I of the 1955 Treaty; it was preceded by no boundary negotiations; and after it entered into effect, it was followed by no boundary negotiations to delimit or demarcate a boundary. Its purpose was to deal with problems of security and cross-frontier circulation of the populations of each State. In the latter respect, its emphasis shifted away from the transhumanism and nomadism reflected in the Libyan-French Convention to a policy, favoured by both States, of encouraging the tribes to adopt more sedentary habits.

5.541 In dealing with these questions. the 1966 Accord made references to a Libya-Chad "frontière". For example, Article 1, dealing generally with frontier security, started off:

> "Sur la frontière séparant le territoire du Royaume-Uni de Libye de celui de la Republique du Tchad ...".

And in Article 2, under which each party promised to make available facilities for the circulation of their populations within a defined geographical area, the following provision is to be found -

> "... aux populations installées de part et d'autre de la frontière à l'intérieur des zones géographiques délimitées par les points ci-dessous ...."

The points designated to define this geographical area were these:

For Libya: Koufra, Gatroun, Mourzouk, Oubari and Ghat.

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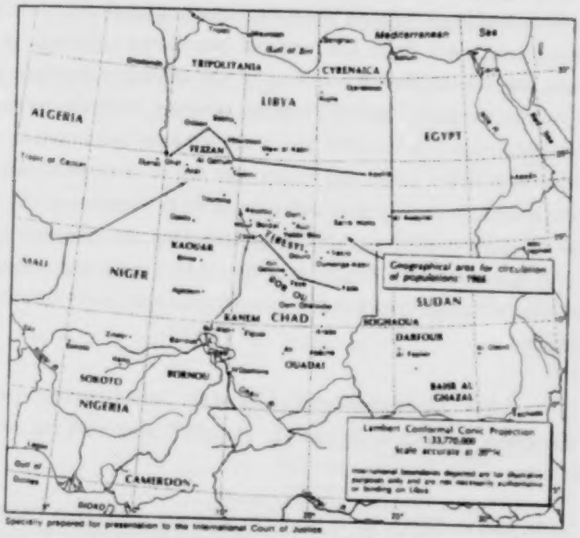
[574] Treaty of Amity between Libya and Chad of 2 March 1966, International Accords and Agreements Annex, No. 32. At the same time, agreements concerning air transport and commercial relations were signed. Agreement on Commercial Exchange between Libya and Chad of 2 March 1966, International Accords and Agreements Annex, No. 33.

For Chad: Zouar, Largeau and Fada.

These points may be found on Map No. 98, on which lines have been drawn connecting the points to show this geographical area.

Map No. 98



Specially prepared for presentation to the International Court of Justice

5.542 These provisions of Articles 1 and 3 of the 1966 Accord replaced similar provisions to be found in Articles 1 and 9 of the 1955 Convention de bon voisinage. Thus, it is necessary to examine those provisions as well. Article 1 of the 1955 Convention, also dealing with frontier security, began as follows:

> "Sur les frontières, telles que définies à l'article 3 du Traité d'amitié et de bon voisinage, séparant le Royaume-Uni de Libye des territoires dont la France assume la défense (as defined in Article 5

> of the 1955 Treaty, that is Tunisia, Algeria, and the A.O.F. and A.E.F.) ...[575]"

As has been set out above in the Section devoted to the 1955 Treaty, Article 3 of the Treaty (and its related Annex I) did fix one sector of the Libyan boundary: the sector between Ghat and Toummo, which had already been delimited by an international agreement[576]. Similarly, the Tunisian and Algerian boundaries south to Ghat had been delimited by international agreements. Article 3 of the 1955 Treaty reaffirmed these international boundaries (although in the 1956 Convention the Ghadamès-Ghat section of the boundary between Libya and Algeria was also rectified). East of Toummo, however, there was no conventional boundary, and Article 3 of the 1955 Treaty did not alter that situation. When the 1955 Treaty took effect, Libya and France had still to sit down to negotiate that part of the boundary, as they were called on to do by Resolution 392(V). So far as Libya's southern frontier was concerned, therefore, this reference in Article 1 of the 1955 Convention to Article 3 of the 1955 Treaty was necessarily to a boundary that had never been fixed by international agreement and, thus, had yet to be delimited.

5.543 Three other provisions of the 1955 Convention are relevant to this discussion, Articles 9, 10 and 11. Article 9 dealt with the circulation of nomadic tribes -

> "... de part et d'autre de la frontière séparant d'une part l'Algérie, l'Afrique Occidentale Française et l'Afrique Equatoriale Française, d'autre part la Libye afin de maintenir les courants caravaniers traditionnels qui existent entre les régions du Tibesti, de l'Ennedi, du Borkou, de Bilma et des Ajjers d'une part, et celles de Koufra, Mourzouk, Oubari, Ghat, Edri et Ghadamès d'autre part."

The regions mentioned above may be found on Map No. 99. Under Article 10, a zone was created on either side of "la frontière" that was open for nomades carrying the appropriate card to circulate. The limits of the zone, first as to its southern extent on "territoire française" and then as to its northern extent on "territoire libyen", were defined in the Article by a line connecting a number of named points. This line and these points appear on Map No. 99. Finally, Article

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[575] Convention de bon voisinage of 10 August 1955 between Libya and France, International Accords and Agreements Annex, No. 28. The 1955 Convention is to be distinguished from the 1955 Treaty, described in prior paragraphs.

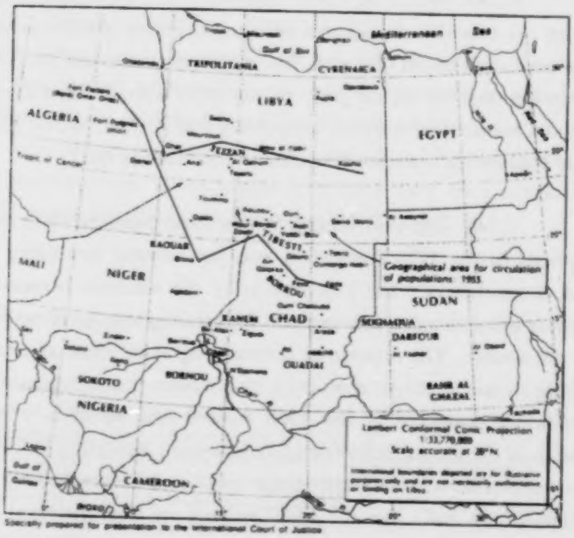
[576] It fixed this boundary by rectifying the boundary delimited in 1919. See, e.g., para. 5.469, et seq., above.

11 set out the locations where circulation cards were to be issued, in the following way:

> On French territory (the administrative authorities at): Fort Flatters, Fort Polgnac, Djanel, Bilma, Zouar, Largeau and Fada.
>
> On Libyan territory (the administrative authorities at): Ghadamès, Ghat, Mourzouk, Koufra and of the Touareg (Tuareg) Oraghen.

These locations also appear on the map.

Map No. 99



Specially prepared for presentation to the International Court of Justice

5.544 The 1955 Convention concerned the entire frontier area between Libya and the adjoining territories, the defense of which France had assumed responsibility for; hence it related to Libya's western frontier as well as to its southern frontier. The 1966 Accord was limited to the Libya-Chad frontier. Whether a conventional boundary existed, or where it lay, were not within the domain of either of those agreements. They were only concerned with the practical measures necessary for assuring frontier security and for assisting cross-frontier circulation. There was no question that the Libya-Chad borderlands were territories for whose defense France was responsible, just as France had been responsible for the defense of Fezzan prior to the 1955 Treaty; but being responsible for the defense of a region and having legal title to it were entirely separate matters. The areas designated as being Libyan and French or Libyan and Chadian were based on the situation prevailing at the time relating to responsibility for their defense, not the respective rights and titles to the areas. In 1955, the French forces were in Fezzan, Tibesti, Ennedi and Borkou. They were preparing to evacuate Fezzan, which they also had occupied, although it was uncontestably Libyan territory. None of this bore on the question of where the boundary was located; it only concerned the creation of a security zone.

5.545 Where the French military forces were located had a direct bearing on the practical measures to be taken to assure frontier security and to facilitate circulation across frontiers. The geographic zones and the points said to fall within the territory of one party or the other were defined solely for that purpose and not in order to define a boundary that Article 3 of the 1955 Treaty - which did concern the matter of boundaries - had failed to do.

5.546 The 1966 Accord, though it narrowed the focus and changed the emphasis of the 1955 Convention, was not entered into under essentially different circumstances. The practicalities of the situation necessarily had to govern these administrative arrangements for assuring frontier security and cross-frontier circulation. The creation of certain geographic areas as security zones and making certain territorial allocations for purposes of carrying out the security and circulation provisions of the 1966 Accord had no more effect on the delimitation of the international boundary between Libya and Chad than did the 1955 Convention de bon voisinage. Since Libya and France had not agreed on these boundaries - and Libya and Chad had not yet even discussed the matter together - a practical solution was required to deal with the real problems of the moment. The practical solution found in the 1966 Accord also reflected the state of Libya's knowledge at the time, prior to having conducted a study of the boundary question and relying to a considerable extent on misrepresentations of the French authorities as to the effect of the "actes internationaux" on the status of the Libya-Chad frontier.

(d) Replacement of the Monarchy by the Libyan Arab Republic on 1 September 1969

5.547 Immediately after King Idris had been deposed, on 1 September 1969, the ambassadors of foreign governments were advised by Libya that the changes were internal in character and that existing treaties and agreements remained in effect[577]. Nevertheless, among the first objectives of the new regime under the leadership of Colonel Kadhafi was to secure the complete evacuation from Libyan territory of all foreign forces and the abrogation by mutual agreement of the various agreements with the United Kingdom and the United States. This had all been accomplished by early 1972.

5.548 In this respect, the situation in Libya was very different from that in Chad. Having started to acquire a certain measure of economic independence, Libya was in a position to rid itself of foreign control and influence. Chad, racked by rebellion, was forced repeatedly to seek French assistance. The turbulence in the Libya-Chad borderlands became an increasing source of concern to Libya, not least of all in the light of foreign interventions there[578]. The indigenous peoples, who in Libya's view were Libyan, were suffering from serious deprivation and their lives were at risk.

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[577] Nyrop, R. F.; Anthony, J. D.; Blenderly B. J.; Cover, W. W.; Parker, N. B.; Teleki, S.: Area Handbook for Libya, American University, 2ed, 1973, p. 39. (A copy of this page is attached as Exhibit 82.) The 1955 Treaty between Libya and France remained in effect; but as noted above in para. 5.506, et seq., when the French Government was again notified in 1972 by the U.N. Secretariat that the 1955 Treaty had not yet been registered under Article 102 of the U.N. Charter, the French Government took no action to have it registered.

[578] At first these interventions were restricted to France; but later they were to involve other African States and the United States, at a time when the latter had begun its massive anti-Libya campaign.

(e) **Rupture and Reconciliation Between Libya and Chad**

5.549 In August 1971, diplomatic relations were broken between Chad and Libya[579]. On 6 October 1971, the Foreign Minister of Chad presented a statement to the United Nations General Assembly attacking Libya[580].

5.550 France and Niger attempted to mediate this dispute. At Niomey on 22 April 1972, under the aegis of Nigerian President Diori, diplomatic relations were restored. This amelioration in relations between Libya and Chad in 1972 has been described in this way by one authority -

> "... in April 1972, both sides were for different reasons ready to reach a 'tactical armistice' in which the French role may have been more one of persuasion than of mediation, although the ostensible mediator was President Diori Hamani of Niger. Diplomatic relations were resumed, and in return for renewed Libyan friendship, withdrawal of official support for Frolinat (Abba Siddick was moved from Tripoli to Algiers), and the pledge of substantial financial aid, President Tombalbaye was persuaded to break off relations with Israel, which in fact had no important interests in Chad[581]."

5.551 To revert to the statement of Chad's Foreign Minister to the General Assembly on 6 October 1971, in his speech he mentioned a map recently issued by Libya:

> "I said a short time ago that one of the principles of the OAU is respect for the sovereignty and the territorial integrity of each State. The Libyan Arab Republic, discarding this principle, did not hide its expansionist aims on an official road map which was published in Italy in 1970. We can see with some astonishment that quite a sizable part of our national territory was included in the Libyan Arab Republic as being national Libyan soil. But our surprise and our astonishment did not stop there. The legend on this map indicated that the international frontiers which were traced on it should not be considered as final, that they were liable to be changed. This map is readily available to everyone at the Studi Cartografici Publishing Company, via Sidoli 7, Milan, and is

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[579] In the meantime, in 1968, under the right of asylum provisions of the 1966 Accord, the Derde of Tibesti had sought and been given refuge in Libya, as had some of the leaders of the Frolinat. The Frolinat (le Front de libération nationale du Chad) was formed on 22 June 1966 at Myala (Sudan).

[580] United Nations. Official Records of the 26th Session of the General Assembly. Plenary Meetings. 1955th meeting, 6 October 1971, Agenda Item 9, para. 47. (A copy of this page is attached as Exhibit 83.)

[581] Wright, Libya, Chad and the Central Sahara, op. cit., pp. 129-130.

> distributed by the Fergiani bookshop in Italy. I have a copy of this map for those who would like to refer to it[582]."

It is not clear how such a map could be characterized as "official"; but in any event, in the confused state of affairs resulting from the failure of Libya and France to delimit Libya's southern boundary in 1955 - and, thus in the absence of a conventional boundary there - it is not surprising that maps issued should show various boundaries. The official map of Libya issued with Petroleum Regulation No. 1 of 1955 has been mentioned above[583]. Libya has no evidence that this map was ever protested by France. It showed a line close to that appearing on United Nations maps at the time (although the latter always contained the customary disclaimer that Chad's Foreign Minister, paradoxically, found to be offensive).

5.552 Various maps were subsequently to be issued in Libya relating to its petroleum concessions. These were largely prepared in the United States by the United States Geological Survey. Some of these maps showed the 1935 line or the line appearing on the U.N. maps; others set out the 1899-1919 line; still others showed both lines. All of them contained the customary disclaimer. As to the reliability of such concession maps on boundaries, as well as whether they took on an official character, there are several points to be made. Concession maps may be expected to be conservative in designating international frontiers; and boundaries that may be undecided or in controversy will normally be shown in such a way as to ensure that oil companies relying on these maps do not transgress the boundary. Thus, for example, the 1899-1919 line is, for a concession map of Libya, a safer line to show as the international boundary than the 1935 line, subject of course to a disclaimer. And since maps have to show some line for every boundary, it is the wiser course to show a boundary, coupled with a disclaimer, that will not lead the oil companies into difficulty. The only official Libyan map was that issued in 1955 with Petroleum Regulation No. 1. When the Libyan Atlas was issued in 1978, it showed a southern boundary closely resembling the boundary appearing on U.N. maps as well as the boundary shown on the official map of Libya of 1955. The line shown on the Libyan Atlas for Libya's boundary with Chad was also much closer to the 1935 line than to the 1899-1919 line. But even the Libyan Atlas, first published in 1978, contained the following disclaimer:

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[582] Ibid., fn. 124, above.

[583] See, para. 5.525, et seq., above, and Map No. 96.

> "In producing this Atlas, recourse was made to many references for drawing up the boundaries which have been marked in their existing form and status and are thus considered unbinding."

Although this text has suffered somewhat in the translation from Arabic, the provision is clearly a disclaimer as to the location of boundaries. It must also be pointed out that up to that time no serious study of Libya's southern boundary situation had been conducted by Libya. Thus, so far as the Atlas was concerned, it was a question of placing on the map an interim boundary line based on existing precedents but without any commitment by Libya, as the disclaimer made clear.

5.553 The reconciliation between Libya and Chad, mentioned earlier, led to a number of events, which will now be dealt with chronologically. What these events all show is the tacit acknowledgement of Chad (as well as Libya) by its conduct that the boundary east of Toummo remained to be delimited.

(f) Conduct of Chad (and Libya) Constituting Acknowledgement that the Libya-Chad Boundary Remained To Be Delimited

(i) The 1972 Libya-Chad Agreement of Friendship and Cooperation

5.554 The context of this Treaty, signed on 23 December 1972 during meetings in Tripoli, should first be considered. Significant numbers of Libyans, including military forces, were in various parts of the borderlands. In October 1971, the Foreign Minister of Chad had spoken out against Libya at the United Nations accusing Libya of expansionist aims based on a map prepared and distributed in Italy[584]. Then the two countries became reconciled and reestablished diplomatic relations. Meanwhile, the French military mission under General Arnaud had arrived to help Chad, which had a major rebellion on its hands. However, there was not a word of protest about the Libyan presence in the borderlands.

5.555 There was not a single word in the 1972 Treaty mentioning frontiers or boundaries. All of its provisions were general in character, calling for mutual efforts to settle disputes and to develop cooperative programs in a broad range of areas. Expressive of the spirit of the Treaty is Article 6:

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[584] See, para. 5.553, above.

> "The two contracting parties undertake to make every effort to avoid disputes that may arise between the two countries, doing so by direct communications and mutual consultations between themselves. They shall work towards the peaceful resolution of any problems that may arise between them, so as to accord with the spirit of the charter of the Organisation of African Unity and the United Nations Organisation."

This Treaty was entered into by Chad in full knowledge of the presence and activities of Libya in the borderlands.

5.556 These events were followed by the creation of closer ties between Libya and France. Colonel Kadhafi made an official visit to Paris at the invitation of President Pompidou, on 13 February 1974, and agreements of cooperation were entered into, followed by an oil agreement with France's Compagnie Française de Pétrole. At the time, the French Government, too, was not unaware of Libya's presence and activities in the borderlands.

(ii) The 1974 Protocole d'Accord

5.557 In March 1974, Colonel Kadhafi made an official visit to N'Djamena, and the warm relations prevailing between the two countries was much in evidence. Following this, a Protocole d'Accord was signed on 12 August 1974[585]. The 1974 Protocole dealt with the same subjects of frontier security and cross-frontier circulation of populations as the 1966 Accord had treated. The four articles comprising the 1974 Protocole are set out below:

Article 1

> "The two sides emphasise their intention to maintain full cooperation in the light of the historical connections between their fraternal people, and to frustrate all attempts to hinder this mutual cooperation and closeness."

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[585] Protocole d'Accord between Libya and Chad of 12 August 1974, International Accords and Agreements Annex, No. 35. Just before the Protocole was signed several other agreements were entered into concerning economic, commercial and cultural matters. Like the 1966 Libya-Chad Accord, the 1974 Protocole was not concerned at all with territorial boundaries but had a quite purpose: the drawing up of arrangements concerning cooperation between the two states. The Protocole was signed by the Ministers of Information, on each side; it was not preceded or followed by any boundary discussions of any kind.

Article 2

> "The frontier between the two countries is a colonial conception in which the two peoples and nations had no hand, and this matter should not obstruct their cooperation and fraternal relations."

The sentiment expressed here is that this "colonial conception" should not form an obstacle to the close relations between the two countries. The Article suggested guidelines for future negotiations to delimit the boundary, where the principle would be the establishment of good relations not the arbitrarily drawn lines of zones of influence determined by the Chanceries in London and Paris, none of which lines in any event constituted conventional boundaries binding on the parties.

Article 3

> "It is agreed that there shall be coordination between the local authorities in both countries to provide the necessary services to the inhabitants of the border areas and to maintain their security. This can be achieved by exchange visits between the Governor of Sabha (Sebha) and the Governor of the Northern Region in Chad, who should draw up a programme accordingly."

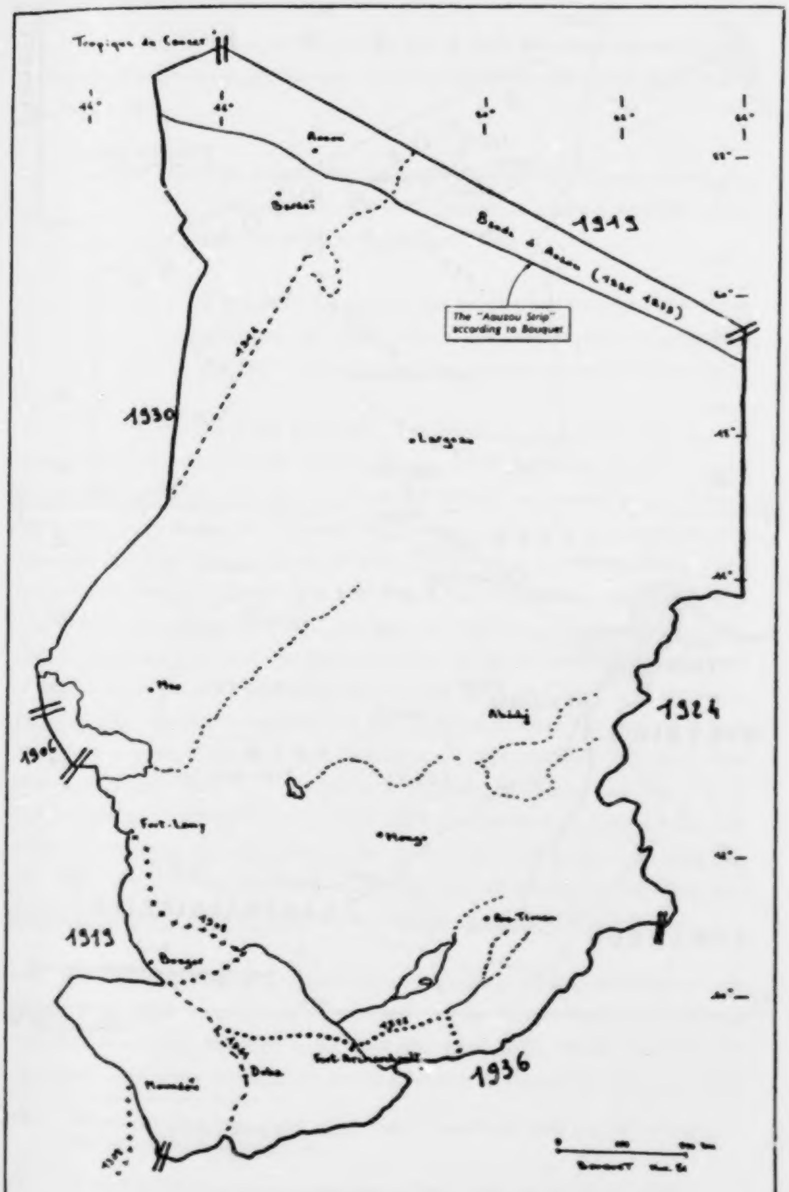
This provision covers the same ground as the more specific provisions of the 1966 Convention, in which regions and zones and specific locations had been mentioned. The formulation here, referring only generally to "border areas" and relying on coordination between the two Governors, was more appropriate to a frontier situation in which the boundaries were undecided.

Article 4

> "A joint Libyan Arab-Chadian committee is to be formed whose task shall be to lay down the basis for the regulation of movement of the inhabitants of the two countries and exchange of information. The two Governments shall agree on the level and membership of this committee, which shall hold its meetings regularly every six months alternately in Tripoli, and N'Djamena, and whenever circumstances require."

Similarly, this provision was a more general and more appropriate approach to regulating the movement of people across frontiers yet to be defined, than that found in the 1966 Convention.

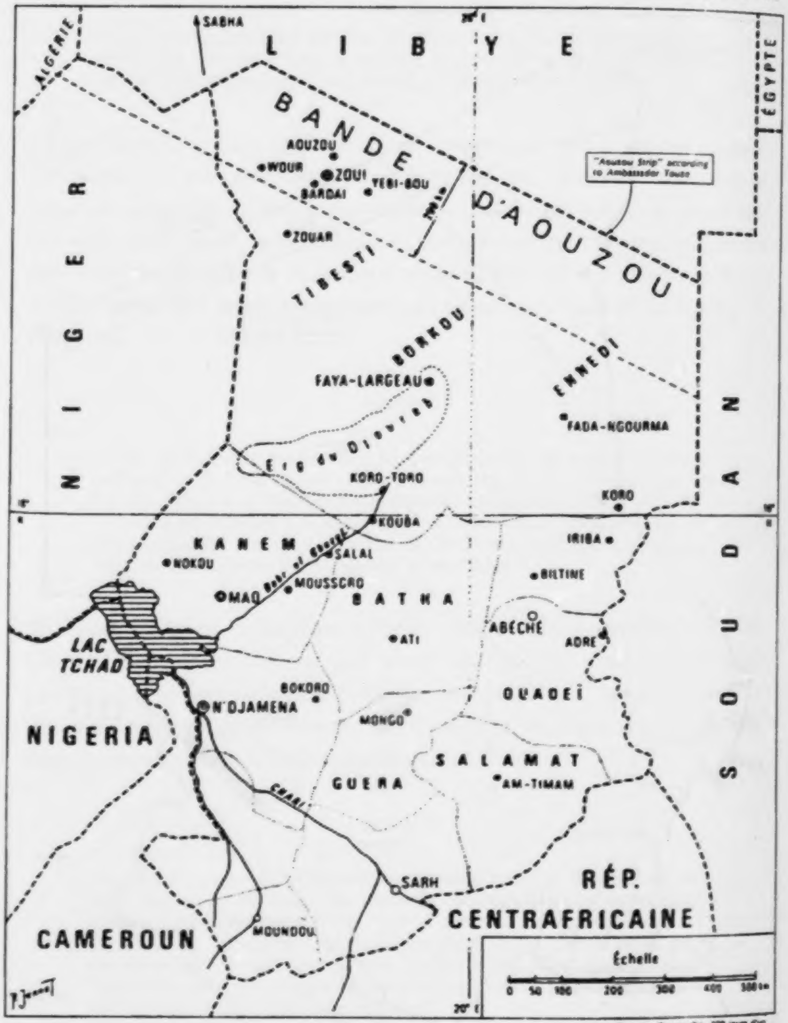
Map No. 100



Les frontières après 1900.

Source: Bouquet, Tchad-Genèse d'un Conflit, Paris, l'Harmattan, 1982, Cart 5

Map No. 101



Source: Touza, R.L. *370 jours d'un ambassadeur du Tchad*, [illegible]

SECTION 3. The Events After 1977

5.558 The post-1977 period can be dealt with here summarily; only a few events are relevant to the case. But two significant aspects of these events should be noted:

- The Libya-Chad territorial dispute (habitually called the "Aouzou Strip dispute") became a political football in the internal political struggles of Chad;
- The Libyan presence in the Libya-Chad borderlands was not protested by Chad before any international organization until 1977 and not otherwise publicly protested before 1975;

5.559 As to the first point, it is helpful to digress for a moment to examine what was meant by the phrase "Aouzou strip" or bande d'Aouzou", which gained such currency. The term is believed to have originated in the French press. It is now widely used as a short-hand way to refer to the territorial dispute between Libya and Chad. It is, regrettably, as misleading as it is useful, for it had as its origin a mistaken notion - that the Libya-Chad dispute was over that strip of land lying between the 1899-1919 line and the 1935 line, which the preceding parts of this Memorial have demonstrated is not at all the case. This conception of the "bande d'Aouzou", as portrayed in a 1982 book on Chad[586], is set out in Map No. 100. Another conception of the "bande d'Aouzou" appears on a map included in a book of R. L. Touze, published in 1989, entitled: "370 jours d'un ambassadeur au Tchad"[587]. As the title suggests, M. Touze was the French Ambassador to Chad, between 22 April 1974 and the end of April 1975. The version of this strip of land shown on the map in his book appears as Map No. 101. This man, very well informed on the matter in question, showed Wour and Bardaï as within the "bande", whereas on Map No. 100 they are outside of it.

5.560 As to the second point, concerning the long delay before any protest was made over Libya's presence in the borderlands, the French Ambassador to Chad between April 1974 and April 1975, whose book has just been mentioned, kept a journal of the daily events of that year, which his book quotes from. It is a useful source of information. For example, on 27 May 1974, he paid a visit to the Libyan Ambassador to Chad. His book contains this passage from the entry for that day, in the course of mentioning the "bande d'Aouzou" and Libya's claims further to the south:

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[586] Bouquet, C.: Tchad-Genèse d'un conflit, Paris, L'Harmattan, 1982, carte 3. (A copy of this map is attached as Exhibit 84).

[587] Touze, R. L.: 370 jours d'un Ambassadeur au Tchad. Paris, France-Empire, 1989.

> "Il est connu ici que les rebelles ont actuellement de bons contacts avec les Libyens et trouvent chez eux, depuis longtemps, asile et appui. Aouzou est maintenant dotée d'une garnison libyenne, sans avoir pour autant entraîné réaction du gouvernement de Tombalbaye[588]."

Thus, more than two years after a Libyan presence had been noted by Chad (according to subsequent Chadian reports) in what the former French Ambassador calls the "bande d'Aouzou" no protest of any kind had been made by the Government of Chad. To the contrary what had transpired were the 1972 and 1974 agreements between Libya and Chad. The Ambassador failed to add that there was no protest from France, either, and that France, too, had just entered into agreements with Libya.

5.561 Then came the first public reactions of the Government of Chad concerning the alleged occupation by Libya of its territory. On 26 September 1975, General Malloum reportedly took note of the presence of what he referred to as Libyan troops in territory he claimed to be Chadian[589]. This is believed to be the first such public utterance by Chad's Government, even though, according to Chad, this "occupation" began to occur in 1971. Rumours started to be published of a secret accord over the sale to Libya of Chadian territory[590]. Then, Chad placed the question before the OAU at the 14th Summit Meeting in Libreville, 10-12 August 1977. Not long thereafter, the matter was referred to the U.N. Security Council by Chad. These steps were not conducive to settlement of the territorial dispute, however, since both international bodies were far more concerned over the internal strife within Chad. It was clear that raising the territorial dispute between Libya and Chad before these international forums, under the guise of Libya's alleged occupation of the

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[588] Touze, op. cit., p. 74. (A copy of this page is attached as Exhibit 85.)

[589] See, Crozetière, P.: "Tchad", Année Africaine, 1975, p. 657. (A copy of this page is attached as Exhibit 86.) General Mallom, former Chef d'Etat - major de l'Armée Tchadienne, has just deposed Tombalbaye.

[590] See, Marchés Tropicaux, 10 October 1975. (A copy of this document is attached as Exhibit 87.)

"Aouzou strip", claimed by Chad to be its territory, was part and parcel of the civil war between the different factions in Chad then raging.

5.562 Chad's complaint to OAU led to the appointment by the OAU of an Ad Hoc Committee, which in turn appointed, in August 1977, a subcommittee of experts "chargé d'étudier le problème frontalier posé dans tous ses aspects". Also adopted at the same OAU summit meeting in Libreville was Resolution AHG/Res. 85(XIV), which can only be read as condemning the French military presence in Chad. It is interesting to note that during this same period, in a declaration made by the Secretary General of the OAU on 19 October 1977, the following was said concerning the principle of the intangibility of frontiers inherited from the colonial past:

> "Le respect des frontières héritées de la colonisation n'est pas un principe sacro-saint. Certes c'est une base de travail irremplaçable, mais qui doit être dépassée ou révisée dans le cadre d'un vaste consensus, car il faut tenir compte à long terme du droit à l'autodétermination[591]."

5.563 Then on 4 February 1978, for the first time, Chad took the matter to the Security Council in a telegram describing what was termed Libya's aggression and military occupation of northern Chad[592]. Libya responded by vigourously denying the allegations and asserting that the matter should be dealt with by negotiations between Libya and Chad or in the context of the OAU[593]. On 17 February 1978, the first Security Council debate on the matter opened[594]. It lasted for one day only, for on 22 February Chad withdrew its complaint to the Security Council following restoration of relations between Libya and Chad[595].

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[591] Rousseau, C.: "Chronique des faits internationaux", Revue Générale de droit international public, No. 1-2, 1978, pp. 697-698. (A copy of this page is attached as Exhibit 88.)

[592] See, United Nations, Security Council, Document S/12554 of 9 February 1978. (A copy of this document is attached as Exhibit 89.)

[593] See, United Nations, Security Council, Document S/12560 of 14 February 1978. (A copy of this document is attached as Exhibit 90.)

[594] See, United Nations, Security Council Official Records, 2060th Meeting, 17 February 1978, Exhibit 91.

[595] See, United Nations, Security Council, Document S/12572 of 22 February 1978. (A copy of this document is attached as Exhibit 92.)

5.564 Certain remarks, quoted below, of the Libyan delegate during the 17 February 1978 session of the Security Council reveal the conciliatory attitude of Libya:

> "If there is a frontier problem, we would be very pleased to discuss it with you. We say we are in our country, you say we are in yours. You say it is Chad. We say it is Libya. This is a classic frontier problem. You say there is aggression and occupation by Libya. But this kind of problem exists on frontiers throughout the world, particularly in regions that are underpopulated (...)
>
> Frontier problems are not easy to resolve. Nobody, be it Colonel Al-Qadhafi or anyone else, can sign a paper saying that Chad is right. It is impossible. And we well understand that General Malloum cannot do that for Chad. And that is true for all countries. But those are things that must be examined and discussed[596]."

5.565 On 15 June 1980, the GUNT[597] as the Government of Chad (with Goukouni Oueddei as President) entered into a Treaty of Amity and Alliance with Libya[598]. It was made public in September and registered under Article 102 of the United Nations Charter in October 1980. The Chadian Government invoked this Treaty in early October asking for Libyan assistance in N'Djamena and in the northern borderlands or "B.E.T." in its struggle against the forces of the FAN led by H. Habré. It is again clear that entering into such a Treaty was entirely inconsistent with any notion that at the time Libya was violating Chad's sovereignty by occupying its territory. It would have been absurd for Chad to enter into an agreement with Libya to protect its integrity in circumstances in which Chad believed Libya was violating the very integrity it was being called on to protect. But the 1980 Treaty was entirely consistent with the situation that prevailed, namely, that a territorial dispute prevailed that the two States wished to resolve when such a task became feasible.

5.566 Such a conclusion emerges from the very nature of the Treaty, involving not only the promotion of amity but an alliance between Libya and Chad, under which Libya was committed in certain circumstances to come to the aid of Chad. Article 7 of the Treaty provided as follows:

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[596] United Nations, Security Council Official Records, 2060th Meeting, 17 February 1978, para. 67 and 71. (A copy of these pages is attached as Exhibit 91.)

[597] The "Gouvernement d'Union Nationale de Transition" formed at first Kano Conference in March 1979.

[598] Treaty of Friendship and Alliance, 15 June 1980, International Accords and Agreements Annex, No. 37.

> "The Republic of Chad undertakes not to permit the presence of any foreign base or imperialist colonialist forces on its territory, and reserves the irght to call upon the Socialist People's Libyan Arab Jamahiriya if its independence, territorial integrity or internal security is threatened in accordance with the provisions of Article 1."

It was clearly not Libya that Chad was concerned would retain or establish bases in Chad. On 22 January 1980, the Chadian Government called on France to withdraw its forces from N'Djamena, and on 27 April 1980, France announced that the evacuation had been accomplished.

5.567 On 6 January 1981, the "Accord de fusion" between Libya and Chad was signed[599]. This, in fact, was a misnomer, as Colonel Kadhafi later pointed out. It was directed at the union of friendly neighbouring people and not the organic unity of two States or the annexation of a former French colony. The Accord was accompanied by a number of economic and technical assistance agreements. The "Accord de fusion" was promptly opposed by France and, at a meeting in Lomé a few days later, by 12 African States. The Lomé communiqué indicated that the withdrawal of Libyan forces had been called for, it being recalled that Libya had intervened militarily at the request of the Chadian Government pursuant to the 1980 Treaty of Amity and Alliance. Libyan forces were withdrawn from N'Djamena on 30 November 1981 at the request of the Chadian Government. Libya remained, however, in the region of northern Tibesti, which was part of the borderlands region, title to which remained to be resolved.

5.568 In early August 1983, France intervened once more in a major way through what was called "Opération Manta". The French Operation announced the drawing of a line across Chad, the "ligne rouge", which initially followed 15°N latitude; it was intended to act as a sort of "cordon sanitaire". The French Government took the position that its military forces were there not to be directly involved in fighting but as a show of force. The "ligne rouge" was to be the southern limit of action that would be permitted from the north. The deployment of forces below this line is shown on Map No. 102, the reproduction of a sketch map in a book of a certain "Colonel Spartacus"[600]. It is significant that the "ligne rouge" followed the line of latitude 15°N (subsequently moved to 16°N), for it was a reflection of the uncertain and unresolved status of the regions lying north of there.

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[599] Accord between Libya and Chad of 6 January 1981, International Accords and Agreements Annex, No. 38.

5.569 In January 1984, following attacks from the north on Ziguei, only 300 kilometres north of N'Djamena, the French decided to move the "ligne rouge" one degree northward, to 16°N latitude. The situation at that time is depicted on Map No. 103. It is once more depicted as of September 1984 on Map No. 104.

5.570 These events led to new efforts to resolve the differences between Libya and Chad. The Ad Hoc Committee was reactivated at the Addis Ababa summit conference, 28-30 July 1985, and was called on to report on the matter at the next conference. The Ad Hoc Committee met in Libreville during 27-28 April 1987. Libya did not participate and set out certain conditions to be met if Libya was to do so in the future. At this meeting the subcommittee of experts was reactivated.

5.571 The subcommittee met twice in Libreville: from 18 to 20 May 1987, and from 20 June to 9 July 1987. Libya did not participate at these meetings. The subcommittee issued its first report after the end of the meetings.

5.572 The Ad Hoc Committee met again in Lusaka during 23 and 24 September 1987; there it was decided that the subcommittee should meet again, which it did during 13-27 January 1988. At the end of these meetings the subcommittee's second report was issued reflecting the fact that Libya had contributed a large number of documents bearing on the question.

5.573 Just as in its presentations to the United Nations Security Council, Chad made what seems to have been a full presentation of its case to the subcommittee. In fact, Chad had already presented several long memoranda

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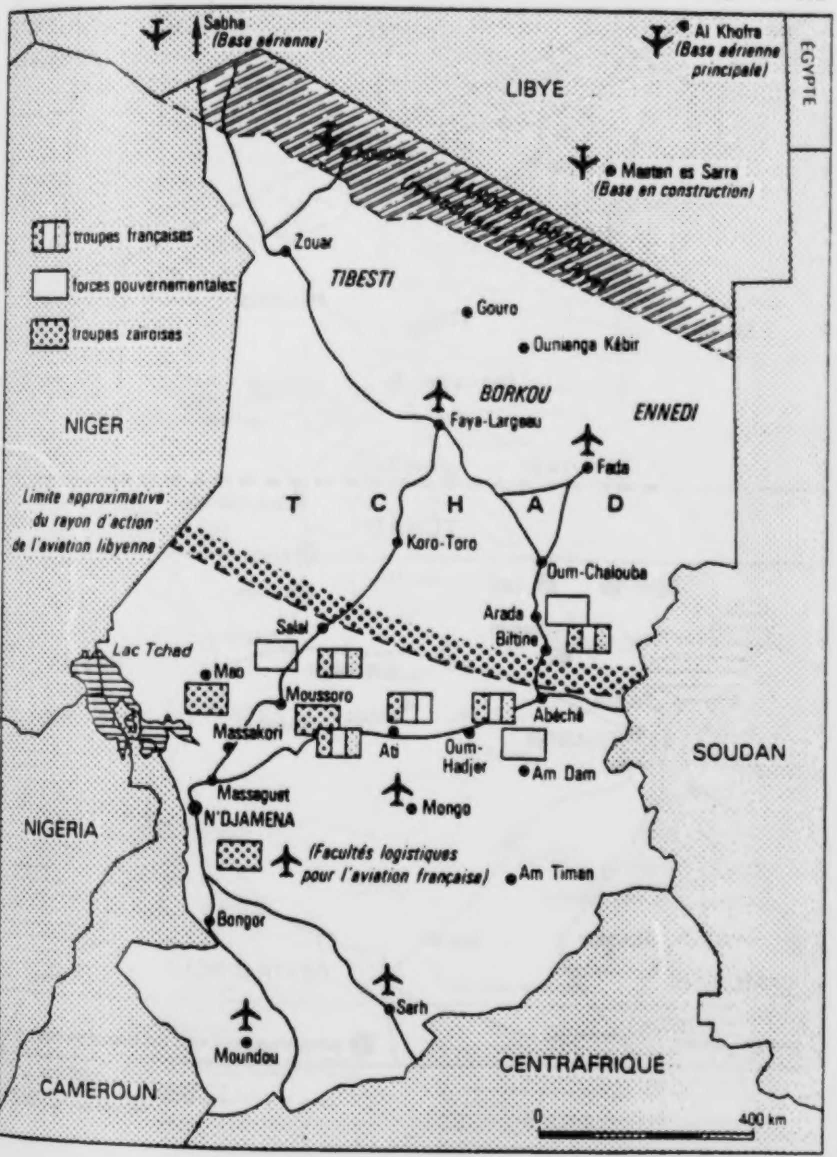
[600] The position of Algeria at the time has been reported as follows -

> "... mécontente du déclenchement de l'opération Manta, signifia à la France qu'elle interdisait tout survol de son territoire par des avions militaires français."

Colonel Spartacus: Opération Manta, Paris, Plon, 1985, p. 52. "Colonel Spartacus" is the nom de plume of a French military officer who wished to remain anonymous. (A copy of this page is attached as Exhibit 93.)

Septembre 1983

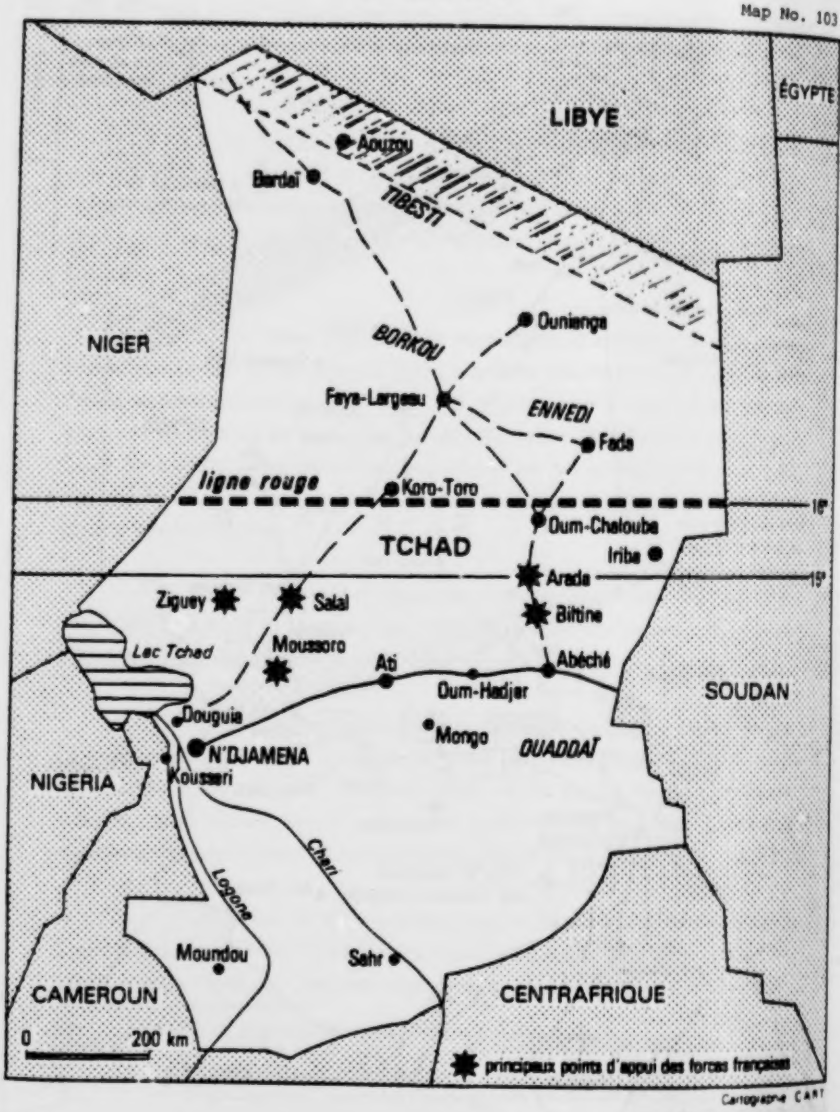
Map No. 102



Source: Colonel Spartacus, Opération Manta. Tchad 1983-1984, Plon 1985.

Janvier 1984

Map No. 103

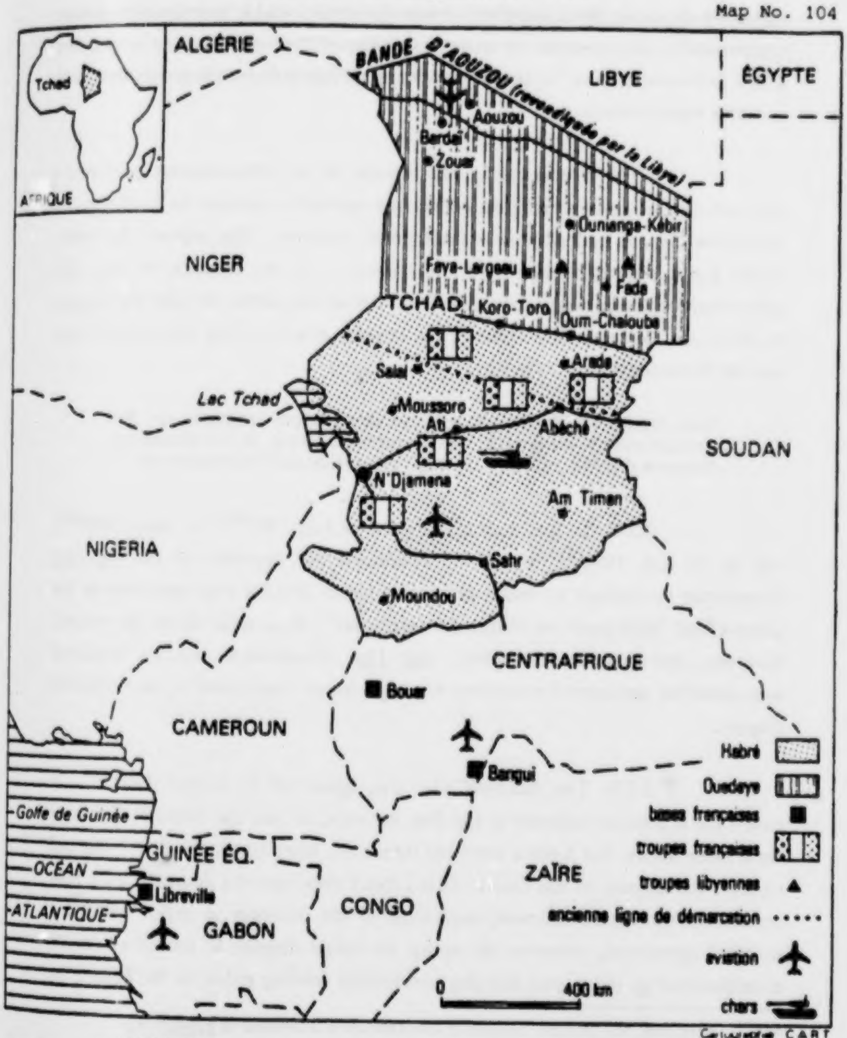


Cartographie CART

Source: Colonel Spartacus, Opération Manta Tchad 1983-1984, Plon 1985

Situation en septembre 1984

Map No. 104



Cartographie CART

ARMEE FRANÇAISE

2 738 combattants appartenant à l'infanterie de marine, à la légion étrangère, aux troupes aéroportées avec jeeps, camions, blindés légers AMX 10-RC, ERC, Sagaie et à l'aviation légère de l'armée de terre équipée d'hélicoptères Gazelle et Puma.
L'armée de l'air avec 510 hommes, les Mirage F 1 et les Jaguar.
La marine avec 41 personnels.

GUNT ET ARMEE LIBYENNE

Environ 6 000 combattants + un nombre indéterminé d'ex-soldats de l'armée nationale (la plupart originaire du sud).
Environ 2 000 soldats libyens ou « légionnaires islamiques ».
Des instructeurs libyens (peut-être nord-coréens ou ceylanais, selon Washington).
Armement moderne, orgues de Staline, RPG, canons SPG.
Aviation : Mig-Tupolev-Sukhoï libyens plus avions de transports libyens.

Source: Colonel Spartacus, Opération Manta, Tchad 1983-1984, Plon 1985

setting out Chad's position on the territorial dispute to the United Nations. Libya, on the other hand, supplied certain documents and a limited and tentative commentary. Libya wished not to be obstructive of the subcommittee's work, but it did not consider this to be the proper or competent forum to resolve such complex legal matters.

5.574 The resulting two reports of the subcommittee performed the useful function of starting to collect the materials relevant to resolving the territorial dispute and making a preliminary analysis. The reports, however, called for a political solution of the dispute. In the absence of that, the subcommittee recommended that the OAU call on the parties to refer the dispute to the Court for resolution. One of the reasons given for this recommendation was the following:

> "Les Parties au conflit ont soulevé des moyens articulés sur des considérations juridiques très complexes pour la connaissance desquels il serait judicieux de saisir une juridiction internationale."

5.575 In Resolutions adopted in July 1987[601], in May 1988[602], and in 26 July 1989[603], the OAU continued the mandate of the Ad Hoc Committee to attempt to find a political solution to what was described as the Libya-Chad "différend" or "différend territorial". It is clear from the record, however, that neither the OAU Ad Hoc Committee nor its technical subcommittee attempted to resolve the legal issues concerned in the territorial dispute.

5.576 The Accord-Cadre was signed on 31 August 1989[604]. It called for a political solution in the first instance, as had the OAU Resolutions mentioned above, but it set a one-year time limit, after which the Parties agreed to refer the dispute to the Court. It is Libya's view that the Accord-Cadre now notified to the Court, following expiration of the one-year in period without a political agreement, presents the entire territorial dispute to the Court for its consideration ab initio, and that any conclusions relating either to the facts or to the law either suggested or hinted at in the reports of the OAU subcommittee of experts are neither binding nor persuasive in the case. These questions were never subjected to profound study by the subcommittee or to an adversarial exchange of views between the Parties.

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[601] AHG/Res. 167 (XXIII). (A copy of this Resolution is attached as Exhibit 94.)

[602] AHG/Res. 174 (XXIV). Exhibit 95.

[603] AHG/Res. 184 (XXV). Exhibit 96.

[604] Accord-Cadre between Libya and Chad of 31 August 1989, International Accords and Agreements Annex, No. 39.

PART VI
THE LAW AND ITS APPLICATION TO THE FACTS

CHAPTER I. INTRODUCTION - FACTUAL CONCLUSIONS

6.01 It is useful in order to identify the rules of law relevant to the present dispute to state the main conclusions that the facts discussed in the previous chapters of this Memorial lead to, and the particular issues to which the rules of law should be applied.

SECTION 1. The Absence of a Conventional Boundary East of Toummo

6.02 The first and most significant conclusion to be derived from the evidence of events bearing upon the territorial dispute between Libya and Chad is that at the time of Libya's independence in 1951 no conventional boundary existed as between Libya and Chad to the east of Toummo. Certainly, the only powers capable of entering into a binding boundary agreement - the indigenous peoples, the Ottoman Empire and Italy - never did so, either with France or any other State. Since that date, there has been no agreement to modify that situation; and the conduct of Libya, France and Chad since then has not altered the status quo at the time of Libya's independence, but rather has confirmed it. These conclusions are based, inter alia, on the following:

With respect to the various treaties, agreements and accords:

- With respect to the Ottoman Empire, no international agreement affecting the rights and titles held and asserted by it over territories embracing the Libya-Chad borderlands was ever entered into by the Ottoman Empire; these rights and titles were passed on in full to Italy, by the Treaty of Ouchy in 1912, as France and Great Britain confirmed on several subsequent occasions, without any reservation, such as in Article 10 of the 1915 Treaty of London.

- With respect to Italy, prior to the 1935 Treaty of Rome between it and France, Italy had not entered into any agreement that affected in any way these rights and titles inherited from the Ottoman Empire; and Italy and France failed to take the final steps in the ratification process required by the 1935 Treaty;

upon achieving independence, Libya inherited the full rights and titles that Italy had held over the Libya-Chad borderlands.

- The 1900-1902 Accords between Italy and France did not concern the regions comprising the Libya-Chad borderlands; they only related to the boundary of Tripolitania proper (excluding its hinterland) as that boundary was then conceived and as portrayed on a map referred to in the 1902 Accord; in the Accords, France undertook not to extend its zone of influence so as to encroach on Tripolitania as thus defined; thus, the Accords cannot be construed as agreements under which Italy forfeited any rights or titles over the borderlands regions, either present or prospective; however, in these Accords, in a unilateral declaration to Italy, France also undertook not to extend its zone of influence to the north or east of the line set out in Article 3 of the 1899 Anglo-French Declaration, a line that was intended to meet the end point of the first segment of the boundary established under Article 2 of the 1899 Declaration and, hence, to follow almost a true northwest/southeast direction.

- The 1902 Anglo-Italian Accord did directly concern the Libya-Chad borderlands, unlike the 1900-1902 Franco-Italian Accords, for the borderlands fell largely within the Cyrenaican hinterland and, hence, concerned the British, rather than the French, sphere of influence; this difference between these Accords demonstrated the more limited scope of the Franco-Italian Accords of 1902; in the exchange of documents that constituted this Accord, Great Britain formally assured Italy that the 1899 Anglo-French Declaration did not involve a territorial boundary north of 15°N latitude, only a zone of influence as between Great Britain and France.

- The 1955 Treaty between Libya and France was not intended to, and did not, establish any territorial boundaries except in the sector west of Toummo (which does not concern territory in dispute in the present case); as to that sector, Annex I of the 1955 Treaty brought about a rectification of the pre-existing boundary delimited by the Franco-Italian Agreement of 12 September 1919.

- Other than to accomplish a further boundary rectification - in the Libya-Algeria frontier between Ghadamès and Toummo, which was the object of the Agreement of 26 December 1956 between Libya and France - no further negotiations concerning Libya's territorial boundaries took place between Libya and France following the 1955 Treaty; and there have been no subsequent negotiations with Chad leading to agreement on any such boundary east of Toummo, the boundaries referred to in the 1955 Convention de bon voisinage and the 1966 Libya-Chad Accord concerning only administrative arrangements for frontier security and the movement of the populations in the borderlands pending agreement on where the boundary lay.

With respect to the relevant State conduct:

- The conduct of France repeatedly confirmed the absence of any conventional boundary east of Toummo:

  - France explicitly confirmed there was no such boundary in 1935 in the exposé des motifs of the 1935 Treaty, in which the French Government formally and officially declared, in explaining to the French Parliament the effects of the 1935 Treaty, that no conventional boundary had existed prior to 1935.

  - Equally confirmatory of the absence of such a boundary was France's support, without reservation, of General Assembly Resolution 392(v) of 15 December 1950, in which the United Nations recognized that Libya's southern boundary remained to be delimited.

  - In proposing (and even scheduling) negotiations, first with the Ottoman Empire (in 1911) and then with Italy (in 1914) - neither of which took place due to intervening events -, the French Government acknowledged that no boundary existed, inter alia, east of Toummo (as the Ottoman and the Italian Governments also acknowledged).

- At other times, France confirmed that no such boundary existed, such as: (i) when Ambassador Cambon, fully aware of the limited effect of the 1899 Declaration, proposed in 1907 the Tilho expedition into the Tibesti, a proposal that was vetoed by the French Government in the light of Ottoman assertions of rights and titles; (ii) in the French Government's attempts in 1921-1922 to concoct a story built around the 1900-1902 Franco-Italian Accords that relied on the famous "missing map" - a story that Ambassador Barrère in Rome, who negotiated these Accords, did not even hint at in two definitive summaries he made of these agreements for the French Government in 1902 and in 1912 - in order to be able to put together a coherent reply to Italy's protest against the Anglo-French Convention of 8 September 1919, in the light of Great Britain's clear position that neither the 1899 nor the 1919 agreements had created a boundary (as distinguished from a zone of influence) or were opposable to Italy (or to the Ottoman Empire in the case of the 1899 Declaration); (iii) as reflected in the "arrangement passager" or modus vivendi between France and the Ottoman Empire under which, until after the Treaty of Ouchy, French forces remained south of a de facto line along approximately 15°N latitude running between the most northerly French posts of Ziguei (in northern Kanem, near Bir Alali) and Arada (in southern Ennedi on the 15°N parallel); (iv) in the repeated attempts during the discussions with Italy following World War I, relating to discharging France's obligations under Article 13 of the Treaty of London, to secure Italy's recognition of the alleged effect of the 1899 and 1919 agreements and of the 1900-1902 Accords in creating a boundary binding on Italy, which the French Government, as shown from internal documents now available from the French archives, had strong private doubts about and hoped in this way to resolve; (v) in 1955, while the 1955 Treaty was under negotiation, in the dispatch of the Governor General of the A.O.F. (French West Africa) cautioning a prudent approach to the boundary question and recommending that it not be put on the table at the negotiations in order to avoid a confrontation with Libya on the issue; (vi) in the treatment by the French Government after World War II of the Libya-Chad borderlands as regions largely to be ignored economically in favour of the more fertile and more populated regions at the latitude of Lake Chad and further to the south; and (vii) in 1983-1984, when France intervened militarily in Chad in "Opération Manta", in the drawing of the "ligne rouge" at 15°N (and then 16°N) latitude rather than at or near where France had publicly claimed the boundary to lie.

- The conduct of Great Britain consistently demonstrated the absence of a boundary arising out of agreements to which it was a party (the 1899 and 1919 agreements): (i) in responding to Ottoman protests, such as in 1890 and 1899, and to Italian inquiries and protests in 1899 and 1921; (ii) in the 1902 Accord with Italy referred to above and the accompanying documents, in which the British position was made clear to Italy that no territorial boundary was involved above 15°N latitude; (iii) in internal Foreign Office documents and notes verbales, notably in 1921-1922, when attempting to reconcile the entirely divergent positions of France and Great Britain on the question of Libya's southern boundary in order to respond to Italy's protest against the Anglo-French Convention of 8 September 1919; (iv) in the fact that in agreeing that the "Sarra triangle" was within Libyan territory the British Government took the position that no Parliamentary approval was required - a clear indication that the 1899 and 1919 agreements only concerned spheres of influence, not boundaries; (v) in the Foreign Office's consideration of the boundary effects of the 1935 Treaty, where the view was expressed in internal papers that, prior to 1935, there had been no southern Libyan boundary; (vi) in the clear indications in the Foreign Office files that British support of the French position on the boundary question during the negotiations with Libya in 1955 leading to the 1955 Treaty was due only to political considerations (and considerable French pressure to support France against Libya, which at the time it was politically expedient for the British Government to accede to).

- The conduct of the Ottoman Empire contradicted the French claims: (i) in the Porte's vigorous and repeated protests to the 1890 and 1899 agreements that encroached on the Ottoman hinterland to which the Ottoman Empire had explicitly laid claim (shrugged off by the French Government in Gallic fashion as being "platonic"); (ii) by its post-1906 occupation of the borderlands in order to reassert this hinterland claim; (iii) in its agreement in 1911 to commence delimitation negotiations over this boundary with France; and (iv) by its willingness, in anticipation of boundary negotiations with the French in 1911, to reduce the 1890 Ottoman claim in order to facilitate agreement on a boundary delimitation.

- The conduct of Italy repeatedly demonstrated that no such boundary existed: (i) in its insistent inquiries in 1899 - when it was reassured by Great Britain that, north of 15°N latitude, the 1899 Declaration only concerned limits to zones of influence and was, in any event, res inter alia acta -, and in its strong, sustained protests against the Anglo-French 1919 Convention; (ii) in its agreement with France to negotiate a boundary agreement in 1914, which was cut short by World War I; (iii) in the course of conduct of the Italian Government from 1919 to 1935, in formulating alternative programs and in making proposals to France (and receiving French proposals) all aimed at reaching agreement on a yet-to-be defined boundary; (iv) as highlighted by the 1930 Italian School Atlas incident in which the Italian Government ordered the Atlas changed, following a protest from the French Embassy, so as to delete the boundary line that had been drawn south of Tibesti and to show no boundary at all east of Toummo; (v) in the very fact that Italy negotiated and signed the 1935 Treaty with France, which, for the first time (as the Treaty's text made clear) brought about a delimitation of such a boundary; (vi) as demonstrated by post-1938 Italian maps, after it was clear that the Treaty would not be completed, on which no boundary east of Toummo was shown; (vii) finally, in the armistice talks with France over the location of a demilitarized zone line, by the clear statement of Italy's General Grossi that Italy did not recognize the existence of any such boundary (assuming that the 1935 line was not legally binding).

- The post-independence acts of Libya and Chad cannot be held to the same standard of conduct as that of the European Powers with their experienced and well-staffed foreign ministries; moreover, the conduct of both States concerning their frontier was conditioned by what they had been incorrectly told by the French Government at a time when neither State was in a position to study the question; but more to the point, the question of the presence or absence of any such boundary was a matter to be resolved based on the period up to the time of Libya's independence, and the "actes internationaux" then in force, as Libya and France agreed in the 1955 Treaty; as a result, the conduct of Libya and Chad is relevant only if it constituted a subsequent agreement modifying the status quo by clearly establishing a boundary, which it did not.

- The conduct of the United Nations, although not State conduct as such, is nevertheless of importance, as revealed by the following: (i) the special study of the United Nations Secretariat concerning the boundaries of Italy's former African Colonies, concluding that it was not clear whether such a boundary had been delimited; (ii) the adoption, after France had corrected the "bévue" made by its delegation, of General Assembly Resolution 392(v) of 15 December 1950, calling for delimitation of the portion of Libya's boundary with French territory not already delimited, a Resolution clearly aimed at Libya's southern boundary east of Toummo; (iii) the tentative drawing on United Nations maps (subject to the customary disclaimer) of a boundary resembling the 1935 line (and in the case of the map annexed to the Secretariat's study, of such a line accompanied by question marks).

Section 2. Resolution of the Dispute Concerns the Attribution of Territory Between the Two States

6.03 The second conclusion to be drawn follows logically from the first. If no conventional boundary exists today (or has ever existed) fixing or determining the limits of Libya or Chad east of Toummo, then the present dispute is not a dispute about the course of a boundary in this area, but rather a dispute about the attribution of territory, to be determined on the basis of which State (Libya or Chad) has the better claim to title to the area in dispute. This leads to these subsidiary questions. What factors in this case determine the area in dispute? What are the factual elements that establish that Libya has clear title to the territory within that part of the borderlands described in the Submissions?

6.04 As indicated at the beginning of the Memorial, and as specifically identified in the Submissions that follow, Libya considers that the area to be attributed by the Court lies within what has been called here the Libya-Chad borderlands, regions lying generally north of 15°N latitude and comprising northern Kanem, Borkou, Ennedi, Tibesti, Ounianga and Erdi. Why this is so and why Libya has the better claim to title to this area are related questions that can be dealt with together.

6.05 The line 15°N has not been picked out of the air: it corresponds to realities. It is a natural line of division to which the facts of this case point, including not only the historical events, but also geographical factors such as the physical features and the underlying geology, the change in climatic zones, the contrasting economic factors and the ethnic mix of the inhabitants. This is not merely a fortuitous coincidence: for such geographical factors had a direct bearing on the make up of the peoples of these regions, their economic lives and their long history. A geographical-geological feature such as the Tibesti-Ennedi Divide, for example, is relevant to this dispute, not as a feature in itself, but as a confirmation of a basic division between the Libya-Chad borderlands and the regions to their south and of the linkage of the borderlands to the regions and peoples to the north. It was the same 15° line that became the de facto boundary between France and the Ottoman Empire prior to the 1912 Treaty of Ouchy. At the origin of this division - now seen in all aspects of these regions and their peoples - were the underlying geographical-geological elements and the results they caused - principally that these regions are largely areas of desert or semi-desert, or are barren mountainous regions, suitable for the Muslim nomad and semi-nomad Libyan tribes that inhabit them.

6.06 The conclusions concerning the factual elements discussed in earlier chapters that help to identify the regions in dispute and to establish Libya's claim to title are summarized below. The factual conclusions in this case that are relevant to identifying the disputed regions and to evaluating Libya's claim to title are, inter alia, the following:

- The existence in the Central Sahara and the Sudan, when the impact of European colonial expansion was felt in the late 19th Century, of political entities and organized societies, closely linked (i) by transaharian trade, (ii) by Islamic and Arab culture, and (iii) by a common Muslim belief and heritage, with the vilayet of Tripoli and the mutassarrifiya of Benghazi (which were under the rule and sovereignty of the Ottoman Empire, which had established garrisons south of Tripoli at Ghadamès (1862), Mourzouk (1865) and Ghat (1875)).

- These commercial, religious and cultural ties were the basis of the rights and titles of the Ottoman Empire in the area, to which the Porte in 1890 formally laid claim as being a part of the Tripolitanian hinterland extending south so as to include the north/south trade routes and the regions controlled by the Sultanates.

- At the time when the 1899 Anglo-French Declaration recognized (as between Great Britain and France) a French sphere of influence down to the Say-Barroua line along an east/west line of approximately 14°N latitude, which overlapped and encroached on the Tripolitanian hinterland to which the Ottoman Empire laid claim, France, unlike the Ottoman Empire, had no ties at all to these regions, no presence there and, accordingly, no basis for a claim to any such sphere of influence.

- On the eve of European colonial expansion, the political entities and organized societies in the region included the Sultanates and the tribes or confederations of tribes such as the Tuareg and the Toubou, of ancient origin in these regions, and the Awlad

Sulaiman and other Arab tribes that had penetrated south from Tripolitania and Cyrenaica; and in the face of the onslaught of French forces that had started to invade their lands after 1900, the disparate tribal groups, which had become followers of the Senoussi Order, accepted the Senoussi as an organizing force against the French forces.

- The Senoussi Order, which was established in Libya, founded zawiyas throughout Tripolitanian, Cyrenaican and the borderlands region starting around 1850, from which the exercise of its religious and temporal authority over the tribal groups was coordinated; the zawiyas were established generally in oases on or near the major trade routes: in Kaouar, just north of Bilma, in 1866; in Kanem at Bir Alali (south of 15°N latitude) in 1895; and thereafter in the Libya-Chad borderlands, such as at Aïn-Galakka (Borkou), at Gouro (Ounianga) - which for a while was the centre of Senoussi leadership in organizing the tribes in the struggle against the French forces - at Bardaï (Tibesti), at Fada (Ennedi), and even as far south as Abéché (Ouadaï).

- Aside from organizing and directing the resistance of the indigenous peoples against the French forces invading their lands, the Senoussi Order's authority over these peoples extended to such matters as arbitrating inter-tribal disputes, organizing the protection of trade along the caravan routes, providing education (reading, writing and arithmetic in the zawiya schools), and collecting alms to support the operations of the zawiyas and of the Order.

- The effective power thus exercised by the Senoussi before and during the period 1900-1913 in the Libya-Chad borderlands extended south to roughly the latitude of 15°N; even after the destruction by French forces of the zawiya at Bir Alali, the French did not move north of approximately 15°N to challenge the Senoussi until after the Treaty of Ouchy (1912).

- In the light of French military advances into the region of Lake Chad and then north into Kaouar, the Ottoman authorities moved substantial Turkish forces into the borderlands regions, starting in 1908; and they cooperated with the Senoussi and the Senoussi tribes in the common objective of attempting to halt the French advances.

- Ottoman forces dispatched from the Ottoman garrison post at Mourzouk (in Fezzan) occupied Tibesti (Aouzou, Bardaï, Zouar), Borkou (Aïn-Galakka and Faya), Ounianga and Ennedi, (Fada, Baki and Oum Chalouba); and together with the Senoussi, they effectively controlled these regions until their withdrawal was ordered by the Porte following the Treaty of Ouchy (at the end of 1912).

- During the period 1910-1913, a modus vivendi existed between the French and Ottoman authorities under which the French forces remained south of a de facto line between Ziguei in northern Kanem and Arada in Ouadaï, a line, again, that approximately followed the parallel 15°N latitude.

- The claim to rights and titles of the Ottoman Empire over these regions, held in conjunction with the local inhabitants, was passed on by the Ottoman Empire to Italy in 1912 under the Treaty of Ouchy before French forces had advanced north of the de facto line of approximately 15°N latitude; and the peoples of these regions, comprised of the tribes and tribal groups who acknowledged the religious and temporal authority of the Senoussi Order, fought the French forces that attempted to invade their lands after the Treaty of Ouchy, as they had before.

- When, after the Treaty of Ouchy, French forces advanced north into Borkou, Ennedi, Tibesti and Ounianga, it was a defensive military move to protect the regions actually occupied by the French in the Lake Chad region and in the regions lying south of there; in the northern sector of the borderlands, and in particular Tibesti, French forces were withdrawn starting in 1914 and did not return until 1929-1930, and then, once more, only for defensive military purposes - in the light, this time, of Italian advances from the north.

- In contrast, the Ottoman Empire and the vilayet of Tripoli approached the hinterland of Tripolitania and Cyrenaica as lands and peoples over which they had sovereignty; the vilayet sought to protect the trade routes, which were crucial to the economy of Tripoli; the French, on the other hand, tried to divert the trade routes to Algiers, and in the end disrupted them totally, a condition from which these routes recovered only after Libya's independence; the occupation of the borderlands by Ottoman forces after 1908 was, in part, a defensive military move in the face of the French advances, but it also was a reassertion of pre-existing Ottoman rights and titles.

- The Senoussi Order came into the borderlands area, not as a military force, but as missionaries and civilisers, and their zawiyas were educational centres, equipped with libraries, in which reading, writing and arithmetic were taught, over and above religious instruction; it was only in organizing the resistance of the Senoussi tribes to the advances of the French forces into their lands that the zawiyas in the borderlands also became armed fortresses; the contrast between the religious, educational and secular roles of the Senoussi and the purely defensive military mission of the French forces during this period is brought out by an incident recounted in the official French military history of Chad and commented on by General Tilho in a talk before the Royal Geographical Society some years later: in 1915 a Lieut. Fouché, serving under Tilho, advanced north of the 1899-1919 southeast line that France claimed to be the boundary, up to the Sarra well, which had been dug and installed under the direction of the Senoussi Order over a period of 20 months in 1898 in this otherwise barren, remote area of the desert; having arrived there, the French contingent studied how best to destroy the well in order to prevent large raids being launched from Koufra (where the Senoussi leadership had withdrawn to) against Tibesti, Ennedi and Borkou - hardly the act of a would-be coloniser[1].

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[1] See, para. 5.116, above.

- At the time the rights and titles of the Ottoman Empire were passed on to Italy under the Treaty of Ouchy, the Sultan in the accompanying Firman granted autonomy to the inhabitants of Tripolitania and Cyrenaica; and in the instruments making up the Treaty, Italy undertook in administering Libya to respect the autonomy of the Libyan peoples; this was a recognition of the personal as well as the territorial dimension of the rights and titles of the Ottoman Empire and of the indigenous peoples; it was the Libyan peoples, led by the Senoussi, that fought the Italian occupation leading the way ultimately to independence under a constitutional hereditary monarchy, with the Head of the Senoussi as the first King of Libya ("an independent Senoussi Kingdom"[2]); thus, in addition to inheriting via Italy the Ottoman rights and titles, Libya inherited such rights and titles as the peoples of the hinterlands of Tripolitania and Cyrenaica had held; and the evidence points to the fact that this included a major part of the borderlands and their peoples - the indigenous tribes; finally, it was the rights and titles of the indigenous tribes and tribal confederations - who, under Senoussi leadership, had fought the French colonial invasion in the south and the Italian colonial invasion in the north, and who had fought alongside the British during World War II, in the long voyage toward the independence of Libya - which coalesced into the sovereign rights and titles of the new State of Libya inherited from the Ottoman Empire and passed on by Italy.

CHAPTER II. THE LAW

SECTION 1. Introduction

6.07 The identification of the rules of law relevant to the particular issues involved in the present dispute assumes that those issues are clear. In practice, however, this may not be so; and it is therefore useful, at the outset, to clarify what these issues are.

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[2] Wright: Libya, Chad and the Central Sahara, op. cit., p. 123. In his speech of acceptance on 17 December 1950, King Idris referred to the Libyan State as "comprising three territories, Cyrenaica, Tripolitania and the Fezzan, within their natural boundaries". (Emphasis added.) See, Pelt, op. cit. p. 459, Exhibit 4.

First, the issue in this case is not one of delimitation of a territorial boundary (and even less one of demarcation) but rather one of *attribution* of territory[3]. Essentially the issue is: to which of the two Parties does the disputed territory belong? It is, in short, an issue of *title*.

Second, the titles claimed by the two Parties are not original but rather *derivative* titles. For both Parties are relatively new sovereign States and they have succeeded to the titles they now claim. Chad, it would seem, claims title by succession to France, which was in fact at most a disputed claim; Libya claims by succession to Italy and the Ottoman Empire and as the State in which the title of the peoples to this territory is vested.

Third, the titles in question being derivative, the passing of the titles presupposes that the date of the passing, or "critical date"[4], can be identified, and may therefore vary from one title to another; and, further, *that the title was a valid title at the time of passing*.

Fourth, and as a consequence of the foregoing, the issues of this case involve not one, simple legal principle but rather a complex of interrelated legal principles. The matter cannot be resolved by one simple postulate - such as "the sanctity of territorial boundaries" or "effective occupation confers title". For, as will presently be shown, such postulates or principles all assume the *validity* of the title in question. The assumption necessarily presupposes that other relevant rules which govern and control the validity of a title are equally relevant. From this it follows that, so far as concerns the acquisition or transfer of legal title to territory during most of the

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[3] This is not to dispute the view of the Court in the *Frontier Dispute*, *Judgment*, *I.C.J. Reports 1986*, p. 563, para. 17 that the difference is one of degree. But, in the present case, the area of disputed territory is large, and the situation is not one in which the Parties are agreed that a boundary resulted from a particular treaty and are arguing over where that boundary lies. Rather, the dispute touches upon the whole *validity* of the claim by Chad, inherited from France, in the Libya-Chad borderlands, so that it is more properly characterized as a dispute over "attribution".

[4] But, *see*, note 22, below, for the suggestion that, in the present case, "critical period" may be more apt than a specific date.

20th Century, the prohibition of the use of force and the obligation to respect the right of self-determination of peoples are legal principles forming part of the complex of legal rules relevant to disputes over the attribution of territory.

SECTION 2. The Integrity of Territorial Boundaries and the Role of the Rules of State Succession and Uti Possidetis Juris

6.08 Territorial integrity is one of the most fundamental precepts of the law and, understandably, this precept has, as its corollaries, the notions of stability and finality of boundaries. As the Court said in the Temple of Preah Vihear case:

> "In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question, and its rectification claimed, whenever any inaccuracy by reference to a clause in the parent treaty is discovered. Such a process could continue indefinitely, and finality would never be reached so long as possible errors still remained to be discovered. Such a frontier, so far from being stable, would be completely precarious.[5]"

6.09 It was to a certain extent in recognition of this principle of stability that, in 1964 at the Cairo Summit Conference, the Heads of State of the Organisation of African Unity adopted the well-known resolution on frontiers, opposed only by Morocco and Somalia, that "all Member States pledge themselves to respect the borders existing on their achievement of national independence.[6]"

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[5] Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962, p. 34. See, also, the views of the Permanent Court of International Justice in the Interpretation of Article 3, Paragraph 2, of the Treaty of Lausanne, Advisory Opinion, 1925, P.C.I.J. Series B, No. 12, pp. 19-20. Other cases wherein the World Court recognized the importance of stability and finality include the Jaworzina, Advisory Opinion, 1923, P.C.I.J., Series B, No. 8 and the Monastery of Saint-Naoum, Advisory Opinion, 1924, P.C.I.J., Series B, No. 9. And Arbitral Tribunals have taken the same view: see, for example, the Award in The Beagle Channel Arbitration (Argentina v. Chile), reprinted in Int'l. Leg. Mat., Vol. XVII, 1978, at p. 634.

[6] OAU Doc. AHG/Res. 16(1). Exhibit 1. For a rejection of any supposed distinction between a Latin American and an African uti possidetis, see, the Dissenting Opinion of Judge Bedjaoui in the Award of 31 July 1989 between Guinea-Bissau and Senegal, paras. 19-20.

6.10 And it is as a reflection of that same principle that Article 62(2) of the Vienna Convention on the Law of Treaties provides that: "a fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty: (a) if the treaty establishes a boundary ...[7]".

6.11 But, however fundamental this principle may be, it is not without qualification. First, it can apply only when the limits or boundaries of the State's territory are settled, and can be defined with certainty[8]. The principle of stability cannot, of its own force, deprive a State of a legitimate claim to territory or transfer, to one State, territory that legitimately belongs to another State. Thus there is no inconsistency between the 1964 OAU resolution and the present Libyan claim, for there was no border east of Tuommo, existing at the date of Libyan independence. This was clearly reflected in General Assembly Resolution 289(IV), for the Assembly's recognition of the need for a delimitation excluded any idea that the boundary pre-existed Libya's independence. Nor did the OAU itself see any incompatibility between the Libyan position and the 1964 Cairo resolution. On the contrary, the OAU supported the Accord-Cadre and recognised that there was a dispute appropriate for reference to the Court. Second, the principle of stability cannot override the principle of the prohibition of the use of force. For the latter principle has been part of positive law since 1919, and in contemporary times is part of the jus cogens. Thus an occupation of territory, or a claim of title to that territory, based upon an unlawful use of force, cannot ground a valid title so as to be protected by the principle of stability. Territorial integrity and the prohibition of the use of force are inseparable. To affirm the principle of territorial integrity - or stability of boundaries - whilst at the same time rejecting the prohibition of the use of force as a means of acquiring a valid title is to make a nonsense of the law.

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[7] The Court has held that Art. 62 of the Vienna Convention may be considered as a codification of existing customary international law. Fisheries Jurisdiction (United Kingdom v. Iceland), Jurisdiction of the Court, Judgement, I.C.J. Reports 1973, p. 18, para. 36.

[8] Verzij, J.: International Law in Historical Perspective, 1970, Vol. II, p. 513; Adami: National Frontiers in Relation to International Law, 1927, p. 3; Boggs: International Boundaries, 1940, p. 5; Shaw: Title to Territory in Africa, 1986, p. 221; Cukwurah: The Settlement of Boundary Disputes in International Law, 1967, pp. 9-10, 92; de Visscher: Théories et Réalités en Droit International Public, 1960, pp. 252-254.

6.12 This remains equally true for a situation in which States claim as successors-in-title. As we shall see in the sections that follow, whether a State claims by virtue of rules of State succession or by virtue of uti possidetis, the claim cannot ignore a defect in the original title or claim. A title illegally acquired cannot be "cured" and converted into a good title simply by the fact of succession.

(a) The Rules of State Succession

6.13 In principle, a successor State inherits the territory of its predecessor as it stands. The boundaries attached to the predecessor State are assumed to remain unchanged: for this is the essence of the principle of stability and finality of boundaries.

6.14 The principle operates independently of whether the boundaries are established by long possession, or by treaty. Where a boundary is settled by treaty, the treaty acts like a conveyance of land in private law, so it is binding on all successors-in-title[9]. The 1978 Vienna Convention on Succession of States in respect of Treaties provides that bilateral treaties do not normally bind newly-independent States unless they consent thereto expressly or by implication from their conduct[10], but then provides a specific exception to this general rule in the following terms:

> "Article 11 - Boundary régimes
>
> A succession of States does not as such affect:
>
> (a) A boundary established by a treaty; or
>
> (b) Obligations and rights established by a treaty and relating to the régime of a boundary."

6.15 It is recognised in theory and in State practice that, upon ratification of a boundary treaty, the agreement becomes executed and thereafter operates as a kind of conveyance. "A successor State then succeeds not to the treaty as such but to the boundaries of its territory, as it does to the other facts of its international life[11]".

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[9] O'Connell, D.P.: The Law of State Succession, 1956, pp. 49-50 and 56-57.

[10] U.N. Doc. A/CONF.80/31, adopted 23 August 1978; reprinted in Am. J. Int'l. L., Vol. 72, 1978, p. 971.

6.16 But, again, these rules of State succession operate on the assumption (i) that the territory of the predecessor State is validly possessed, (ii) that the treaty establishing the boundary is validly concluded and, most importantly here, (iii) that the treaty in fact fixed a boundary. These rules cannot convert a bad title into a good title. Put in other terms, where a territorial claim exists, that claim survives the inheritance, and the new State must oppose that claim on its merits: it cannot contend that its own accession to independence has extinguished the claim of another State in respect of the territory it has inherited. Similarly, the rules of State succession cannot create a boundary where none was ever agreed or fixed before.

6.17 This is clearly so in the practice of States. For example, the claim by Guatemala to part of the territory of Belize, formerly British Honduras, and based upon the alleged right of Guatemala to terminate the 1859 Great Britain/Guatemala Treaty, has been maintained despite the accession by Belize to independence in 1981[12]. China's claim to the Paracel group of islands in the South China Seas has been maintained, notwithstanding the accession to independence of Vietnam[13]. Nigeria evidently maintains claims to certain islands in Lake Chad against Chad, notwithstanding the latter's accession to independence, and even though the regulation of these lake frontiers goes back to the period 1880-1914[14]. And the Case Concerning the Frontier Dispute between Burkina Faso and Mali, resolved by the Court's Judgment of 22 December 1986, demonstrates convincingly that a dispute pre-dating independence is not terminated by the fact of accession to independence[15].

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[11] Lester, A. P.: "State Succession to Treaties in the Commonwealth", 12 I.C.L.Q., 1963, pp. 475-507.

[12] See, the statement by the Minister of Foreign Affairs of Guatemala at the 30th Session of the U.N. General Assembly, 1975, G.A.O.R., Plenary Mtgs., 2372nd - Mtg. And for the background to this claim see the Guatemalan publication by the Ministry of Foreign Affairs, A brief résumé of Guatemala's dispute with Great Britain over the Belize Territory (1783-1977), Guatemala, C.A. 1978.

[13] See, Choon-Ho Park: East Asia and the Law of the Sea, 1983, pp. 209-211.

[14] "Chronique des faits internationaux", (R.G.D.I.P., 87), 1983, pp. 893-894, reporting armed clashes between the two States.

[15] Frontier Dispute, Judgment, I.C.J. Reports 1986, p. 589, et seq., para. 67, et seq.

(b) The Doctrine of Uti Possidetis Juris

6.18 The concept of the integrity or intangibility of frontiers also lies at the root of the doctrine of uti possidetis juris. In the Frontier Dispute case, the Court said:

> "It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, whenever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenge of frontiers following the withdrawal of the administering power.[16]"

The Court described the principle in these terms:

> "The essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved. Such territorial boundaries might be no more than delimitations between different administrative divisions or colonies all subject to the same sovereign. In that case, the application of the principle of uti possidetis resulted in administrative boundaries being transformed into international frontiers in the full sense of the term. This is true both of the States which took shape in the regions of South America which were dependent on the Spanish Crown, and of the States Parties to the present case, which took shape within the vast territories of French West Africa. Uti possidetis, as a principle which upgraded former administrative delimitations, established during the colonial period, to international frontiers, is therefore a principle of a general kind which is logically connected with this form of decolonization wherever it occurs.[17]"

6.19 Moreover, the Court expressly recognised the link between this principle and the policy of the African States reflected in the 1964 Cairo Resolution of the O.A.U. referred to above. The Court said:

> "... at their first summit conference after the creation of the Organization of African Unity, the African Heads of State, in their Resolution mentioned above (AGH/Res. 16 (I)), adopted in Cairo in July 1964, deliberately defined and stressed the principle of uti possidetis juris contained only in an implicit sense in the Charter of their organization."[18]

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[16] Ibid., p. 565, para. 20.

[17] Ibid., p. 566, para. 23. See, also, The Indo-Pakistan Western Boundary Case, India v. Pakistan (Rann of Kutch), Award of 19 February 1968, reprinted in 50 I.L.R. 2, 409-423.

[18] Frontier Dispute, Judgment, I.C.J. Reports 1986, p. 565, para. 22.

The Court went on to state:

> "The territorial boundaries which have to be respected may also derive from international frontiers which previously divided a colony of one State from a colony of another, or indeed a colonial territory from the territory of an independent State, or one which was under protectorate, but had retained its international personality. There is no doubt that the obligation to respect pre-existing international frontiers in the event of a State succession derives from a general rule of international law, whether or not the rule is expressed in the formula uti possidetis. Hence the numerous solemn affirmations of the intangibility of the frontiers existing at the time of the independence of African States, whether made by senior African statesmen or by organs of the Organization of African Unity itself, are evidently declaratory rather than constitutive; they recognize and confirm an existing principle, and do not seek to consecrate a new principle or the extension to Africa of a rule previously applied only in another continent.[19]"

6.20 But this doctrine, like the rules on State succession, has never operated so as to confer upon a new State a valid title over territory in circumstances in which the title of the predecessor State can be shown to be invalid. A fortiori, this doctrine cannot operate to confer title over territory in a situation where, as here, title is claimed on the basis of conventional boundaries that, in fact, were never established. Indeed, the term "uti possidetis juris" itself indicates that what was envisaged was a lawful inheritance, an inheritance of a title which could be demonstrated to derive from the lawful acts of the previous sovereign.

6.21 It was for this reason that acts of occupation ("effectivités") by a State which did not have lawful title, and which transgressed against the lawful title of another State, were regarded as of no effect in law. As the Swiss Federal Council said in the Columbia/Venezuela Case in its Award of 24 March 1924:

> "Encroachments and inopportune attempts at colonization from the other side of the frontier, together with de facto occupations, were seen as without significance or without consequences in law.[20]"

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[19] Ibid., p. 566, para. 94.

[20] U.N.R.I.A.A., Vol. I, p. 228. See also, the Award of 23 January 1933 by Chief Justice Hughes of the United State Supreme Court in the Guatemala/Honduras Case, referring to administrative control in the absence of title as "mere usurpation". (U.N.R.I.A.A., Vol. II, p. 1324.)

6.22 The relevance of this to the present case is clear. Assuming, as we must, that Chad could inherit no better claim to the disputed territory than France itself possessed, the question then becomes one of deciding what claim France had, or what, to borrow from the Court's language in the Frontier Dispute case, was the "photograph of the territorial situation then existing" at the relevant time[21].

6.23 The French claim was based on the existence of an alleged conventional boundary. More than that, in the 1955 Treaty, France agreed that the "actes internationaux" in force at the time of Libya's independence in 1951 were to be the sole basis for establishing the boundary east of Toummo in the negotiations with Libya foreseen to follow the Treaty to fix that boundary. It is clear that, contrary to France's publicly-stated view at the time, the "actes internationaux" then in force established no boundary east of Toummo, so the claim based on a conventional boundary falls. Therefore, it is necessary to examine the status of the disputed area during the relevant time to ascertain where title lay. It is to this question that the discussion now turns.

SECTION 3. The Status of the Territory during the Critical Period[22] (1890-1960)

(a) The Libya-Chad Borderlands Were Not Terra Nullius

6.24 It can hardly be questioned that the territories comprising either the North African Arab States on the shores of the Mediterranean, such as Tripoli, or the Sudanic Sultanates or Kingdoms south of the Sahara were not terra nullius. This has been fully demonstrated in Part IV. These developed Nation-States may not have had precisely defined territories and exclusive jurisdiction within those territories that would fit the pattern of European States at the time. Nevertheless, they were sophisticated societies that enjoyed government, laws, social systems and recognition of their territorial limits. The North African State of Tripoli was under undisputed Ottoman sovereignty, in any event, and this sovereignty was extended southward to Ghadamès (1862), Mourzouk (1865) and Ghat (1875), as shown on Map No. 53 (appearing at paragraph 4.14 above); and after 1908 this sovereignty was extended throughout all the borderlands regions except northern Kanem until the war with Italy and the Treaty of Ouchy.

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[21] Frontier Dispute, Judgment, I.C.J. Reports 1986, p. 560, para. 30.

[22] The concept of a critical period (as opposed to a critical date) was adopted by the Tribunal in the Award in Boundary Dispute concerning the Taba Area, 29 September 1988, para. 172, reprinted in Int'l. Leg. Mat., Vol. XXVII, p. 1469. In Libya's submission, it is a more appropriate concept when, as in this case, the Court has to consider the validity of acts of the Parties, not on one particular date but over an extended period. This view is strengthened by the Court's own preference for a "period" in Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 38, para. 77.

6.25 The regions lying between the North Africa Arab States and the Sudanic Kingdoms, which embrace the Libya-Chad borderlands in dispute here, were inhabited by tribes or tribal confederations. These, too, have been described in detail in previous chapters. Some, like the Tuareg (a confederation of tribes) and the Toubou, were of ancient origin in these regions. Other ancient tribes, such as the Awlad Sulaiman, had come south from the Gulf of Sirt region of Tripolitania-Cyrenaica. There seems little doubt that these tribes and tribal confederations were "tribes or people having a social and political organisation", to quote from the Western Sahara case[23]. Therefore, as the Court said there, the territories inhabited by them were not terra nullius. If there were any doubt as to such a conclusion, it would have been dispelled when the leadership and authority of the Senoussi Order, coming south from Cyrenaica, were established throughout the area, and when zawiyas were located on or near the caravan routes. This organized Senoussi network was in place and functioning well before the incursions of the French forces into the borderlands (Map No. 21)[24]. It is not necessary to repeat here the factors that gave the Senoussi Order many of the attributes of a sovereign power and led to the recognition of its very special status by France, Great Britain, Italy and the Ottoman Empire at the time.

6.26 There is yet a further element of relevance to the status of this territory: this is the Turkish presence in, and claim to, this territory. The Turkish claim was manifest in 1890[25], and was repeated in the Turkish notes of 29 March and 19 May 1899, and 12 March 1902[26].

6.27 The relationship between this Turkish claim and the actual control over the territory by the Senoussi is perhaps best described as one of "mutual accommodation". For what is clear is that Turkey responded to the

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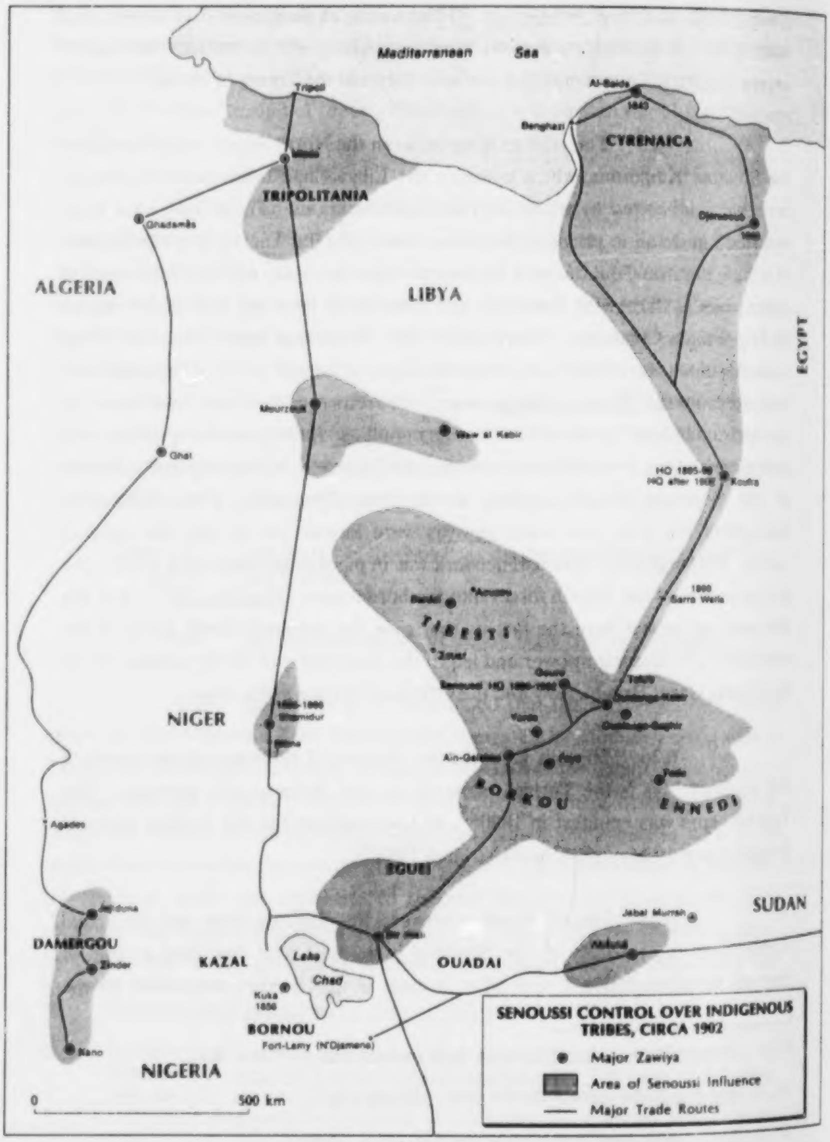
[23] Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 39, para. 80.

[24] Map No. 21 also appears above at paras. 3.53 and 4.90.

[25] See, for more detailed discussion, para. 5.80, et seq., above.

[26] See, para. 5.48, et seq., above.

Map No. 21


Mediterranean Sea
Tripoli
Al-Baida
1843
Benghazi
CYRENAICA
TRIPOLITANIA
Ghadamès
Djaraboub
ALGERIA
LIBYA
EGYPT
Mourzouk
Waw al Kabir
Ghat
HQ 1895-99
HQ after 1902
Koufra
1899
Sarra Wells
Bardai
Aouzou
TIBESTI
Zouar
Gouro
Senoussi HQ 1899-1902
NIGER
Yarda
Ain-Galakka
Faya
BORKOU
ENNEDI
Agadez
EGUEI
SUDAN
Jabal Murrah
DAMERGOU
Zinder
KAZAL
Lake Chad
OUADAI
Kuka
1856
BORNOU
Fort-Lamy (N'Djamena)
Kano
NIGERIA
0
500 km
SENOUSSI CONTROL OVER INDIGENOUS TRIBES, CIRCA 1902
● Major Zawiya
▨ Area of Senoussi Influence
— Major Trade Routes

perceived threat of French encroachment by despatching troops to Tibesti, and that these troops allied themselves with the Senoussi forces to fight the French[27]. A Turko-Senoussi military outpost was established at Aïn-Galakka, Turkish arms were sent to the Toubou tribes (who fought under a Turkish flag)[28], and in 1908 the Head of the Senoussi recognised Turkish sovereignty over the three northern regions of the borderlands[29].

6.28 The clear conclusion is that the borderlands regions were not terra nullius, and certainly not at the time the French forces invaded them after 1900. Of the effectiveness of the Senoussi control - exercised in conjunction with the local tribes - there can be no doubt. Thus, it matters not whether sovereignty lay with Turkey or with the Senoussi. Realistically, the situation might best be viewed as one of shared sovereignty - for the essential point was that sovereignty could not be claimed by France by virtue of occupation of terra nullius. This view is consistent with precedent.

6.29 In the Western Sahara case, in its Advisory Opinion of 16 October 1975, the Court rejected the view that territories of this kind could be regarded as terra nullius, open to occupation by European Powers during the period in question. The Court stated:

> "Whatever differences of opinion there may have been among jurists, the State practice of the relevant period indicates that territories inhabited by tribes or peoples having a social and political organization were not regarded as terrae nullius. It shows that in the case of such territories the acquisition of sovereignty was not generally considered as effected unilaterally through 'occupation' of terra nullius by original title but through agreements concluded with local rulers. On occasion, it is true, the word 'occupation' was used in a non-technical sense denoting simply acquisition of sovereignty; but that did not signify that the acquisition of sovereignty through such agreements with authorities of the country was regarded as an 'occupation' of a terra nullius in the proper sense of these terms. On the contrary, such agreements with local rulers, whether or not considered as an actual 'cession' of

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[27] Wright: Libya, Chad and the Central Sahara, op. cit., p. 113.

[28] Decalo, S.: Historical Dictionary of Chad, 1977, pp. 284-285, Wright, op. cit. pp. 118-119. Turkish troops were also sent to Bardai, Zuar, Aïn-Galakka and Oum Chalouba.

[29] Wright: Libya, Chad and the Central Sahara, op. cit., p. 118.

> the territory, were regarded as derivative roots of title, and not original titles obtained by occupation of terrae nullius.[30]"

6.30 The factors identified as relevant by the Court in relation to the Western Sahara were that the territory "was inhabited by peoples which, if nomadic, were socially and politically organised in tribes and under chiefs competent to represent them", and that European Powers proceeded with their plans to colonise, not on the basis of occupation of terra nullius but of "agreements which had been entered into with the chief of the local tribes.[31]"

6.31 If this is true of the peoples of the Western Sahara, it must equally be true of the peoples of the area north of Lake Chad. Unlike in the Western Sahara, however, in the Libya-Chad borderlands there were no agreements entered into by France with the local rulers. And from this it follows that any claim to title to the territory by France must rest on conquest, not on occupation of terra nullius or on local agreements.

(b) Title Rested with the Indigenous Peoples and with the Ottoman Empire and, Later, Italy

6.32 The title of the indigenous peoples led by the Senoussi in the borderlands regions has been amply demonstrated in Parts IV and V. By the early part of this century, the Senoussi Order had firmly established itself in the borderlands as an organizing and administrative force.

6.33 By 1900, for example, the Order had moved its headquarters to Gouro just south of the Tibesti massif. Zawiyas had also been established at Faya, Aïn Galakka and Bir Alali.

6.34 Local tribes and confederations, such as the Tuareg, paid their allegiance to the Senoussi, and the Senoussi mediated disputes between the Tuareg and the Awlad Sulaiman[32]. The Senoussi Order exerted other forms of administrative control, such as the establishment of zawiyas; and they organized the resistance by the indigenous tribes to the French invasions as well.

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[30] Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 39, para. 80. And see the strictures of Judge Ammoun in his Separate Opinion: "In short, the concept of terra nullius, employed at all periods, to the brink of the twentieth century, to justify conquest and civilisation, stands condemned." (at p. 86). It is noteworthy that the French Judge, André Gros, shared the same view as the majority: "I consider that the independent tribes travelling over the territory, or stopping in certain places, exercised a de facto authority which was sufficiently recognised for there to have been no terra nullius" (p. 75).

[31] Ibid., p. 39, para. 81.

[32] See, para 4.09, et seq., above.

6.35 The title of the indigenous peoples co-existed with a compatible title that resided in the Ottoman Empire. As early as 1890, the Ottomans had made known to both France and Great Britain that they had rights over the borderland areas as part of the Tripolitanian hinterland[33]. These claims were repeated in a note verbale that was handed by a Turkish representative to the French Minister of Foreign Affairs on 29 March 1899 and followed up again in a further note on 14 May 1899[34].

6.36 Prior to 1900, the extent of Ottoman Empire's interests in the disputed area was also well documented. For example, the report prepared by Mahammad Basala in 1894 recorded how several of the tribes were holders of Firmans issued by the Porte[35]. And by 1908, the Ottomans had occupied key oases throughout the area in strength, including at locations in Borkou and Ennedi.

6.37 As has been seen, by 1911 negotiations commenced between France and Turkey to delimit the area between Tripolitania and the French possessions. This led to a de facto line of separation between Borkou, Ennedi and Tibesti, on the Ottoman side, and Kanem and Ouadaï, where French forces remained[36]. One year later, the Ottoman Sultan granted autonomy to the indigenous people of Tripolitania and Cyrenaica in the Firman that was made part of the Treaty of Ouchy.

6.38 A similar modus vivendi arose between the French and the Senoussi, as reflected in the instructions given by the French Minister of Colonies to the French emissary, M. Bonnel de Mézières. Among other things, the French proposed to yield Gouro, where an important zawiya had been established, to the Senoussi[37].

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[33] See, the Ottoman Note of 30 October 1890; Italian Archives Annex, p. 3.

[34] See, para. 5.50 - 5.52, above.

[35] See, para. 4.123 - 4.124, above.

[36] See, para 4.150, above.

[37] See, para. 4.153 - 4.165.

6.39 What the facts show is that the indigenous peoples possessed an existing legal title based on their long-established presence and effective administration and settlement in the disputed areas. This title came to co-exist with Ottoman rights and title in the area as well. The titles of both the Senoussi and the Ottomans pre-dated the French military incursion into the area, and indeed both fought against the French. Moreover, at various times, both the Senoussi and Ottoman presence was recognized by the French in a series of de facto arrangements under which the French forces were restricted to areas south of 15°N latitude, until after the 1912 Treaty of Ouchy had entered into force.

SECTION 4. The Basis of French Claims in the Disputed Area

(a) Lack of a Conventional Boundary or of Conquest

6.40 In contrast to the titles of the indigenous peoples and the Ottomans (as passed on to Italy), French claims in the disputed area rested on essentially two bases. First and foremost, France's claim hinged on the alleged existence of a conventional boundary. This theory has already been shown to be wrong.

6.41 There is, however, another theory on which the French claim might have been advanced - that the borderlands were, in fact, acquired by conquest. Libya considers that conquest is ruled out as well. Whatever might have been the ability of a State to acquire title to territory by conquest prior to 1920 - and Libya does not accept that conquest could have established a valid title - the section that follows will demonstrate that conquest was clearly outlawed by international law as a legitimate basis for acquiring title after 1920. In as much as the borderland regions could not have been said to have been conquered by French forces before that time - and Libya denies that French incursions into the borderlands amounted to conquest even after 1920 - a valid French title to the area in dispute did not exist. The burden of proof to show otherwise falls on Chad.

6.42 The dates concerned here are important. As noted above, it was only after 1912 that French forces moved into the borderlands, destroying the great zawiya at Aïn Galakka in 1913. They seized Fada in Ennedi in 1914. Ounianga (Ouniaga Kebir) was taken in 1913; but the French left that region in

1916. Bardaï in Tibesti was seized in 1914, but the French left Tibesti in 1916, and did not return until 1929. At no stage did France introduce civil administration or, indeed, any territorial administration in the true sense. Thus, it cannot be said that, prior to 1929, there had been anything more than a defensive military incursion into the borderlands; certainly nothing that could be called either effectivité or even conquest.

6.43 Whatever the degree of "effectiveness" of the French occupation may have been, or whatever the extent of conquest - both matters as to which Chad would have the burden of proof - neither occupation nor conquest could ground a legal title if contrary to rules of jus cogens.

(b) The Legal Limitations on the Power of France To Acquire Territory by Force or Conquest

(i) The Covenant of the League of Nations

6.44 Article X of the Covenant of the League provided as follows:

> "The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League ...."

The Covenant came into force on 10 January 1920 so that France was bound by this obligation long before French forces had returned to a large part of the borderlands regions or could have been said to have either occupied or conquered any of it. As Article X prevented France from acquiring territory by way of force, it is clear that in fact she had not become the sovereign in this region before 1920, and was legally prevented from changing the status of this region by way of force after 1920.

6.45 It might be argued that this position is not correct inasmuch as Article X of the League's Covenant only protects "the territorial integrity and existing political interdependence" and does not add explicit language to the effect that the use of force will not be recognised as a means of acquiring title. On this view, although the use of force might be illicit, on the practical level the result of a total assertion of control over peoples and the territory in question would have to be accepted. Thus, the argument might run: aggression is strictly forbidden; but once it has occurred, its fruits will accrue to the aggressor.

6.46 It is not difficult to see why the system of international law was bound to reject such a viewpoint. If such a rule were upheld, it would be tantamount to admitting that the legal order would negate and ignore the very basis and purpose of the prohibition of aggression. Not surprisingly, the logical linkage between the prohibition to use force, the guarantee of territorial integrity and the requirement to refuse recognition to the effect of the use of force, on the level of law, in relation to the territorial status of the area subject to aggression, was clearly recognised by the leading commentators during the existence of the League and subsequently[38].

6.47 On the most general and fundamental level, the issue has been posed and answered in a succinct manner by Jennings:

> "This question has been the subject of some debate; but reason suggests only one answer. To brand as illegal the use of force against the 'territorial integrity' of a State, and yet at the same time to recognize a rape of another's territory by illegal force as being itself a root of legal title to the sovereignty over it, is surely to risk bringing the law into contempt. For it is not simply a question whether it is possible to allow a title which cannot be pleaded without incidentally exhibiting the illegality. Nor is it merely a question of the limits of the maxim ex injuria jus non oritur. The question is whether an international crime of the first order can itself be pleaded as title because its perpetration has been attended with success. It is not, so to speak, a question whether the thief is to be allowed, as indeed he is allowed in English law at least, to have some sort of possession recognized by the law; the question is whether he is to be permitted to plead the very fact of violent rapine as being itself a root of title erga omnes. A wrong may frequently result in a change of title: it can hardly be itself a title[39]."

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[38] See, Wright, Q.: American Political Science Review, Nov. 1919, Vol. 13, p. 559; Lauterpacht, H.: Recognition in International Law, Cambridge 1947, p. 417; Fauchille, P.: Traité de Droit International Public, 8th ed., Vol. I, Part II, p. 769; Spiropoulos, J.: Traité de Droit International Public (1933), p. 178; Schücking, W. and Wehberg: Kommentar zur Satzung des Völkerbundes (1921), p. 274; Schätzl, W.: Die Annexion im Völkerrecht, Archiv des Völkerrechts, vol. 2, (1950), p. 18; Scelle, G.: "Quelques réflexions sur l'abolition de la compétence de guerre" (Revue Générale de Droit International Public, 1954, p. 16); Garner, "Non-Recognition of Illegal Territorial Annexations", (Am. J. Int'l. L., 1936, p. 679); Brownlie, I.: International Law and the Use of Force by States, 1963, p. 418 ("The minimum content of Article 10 involved such an obligation" viz. not to recognise forcible acquisition of territory); Report of Adatci and de Visscher, Annuaire de l'Institut de Droit International, 20 (1923) Bruxelles, p. 26.

[39] Jennings, R.: The Acquisition of Territory in International Law, Manchester, University Press, 1963.

6.48 The *travaux préparatoires* confirm that Article X was designed to protect existing boundaries against any effort to change them by the use of force[40]. U.S. President Wilson had taken a special interest in the subject matter, and the draft presented by the United States was accepted in the deliberations on the Covenant without substantial change. The main discussions over this article concerned the question as to procedures by which existing boundaries could be changed in case they were considered inappropriate and unjust. The principle of the illegality of the use of force for the acquisition of territory was not in dispute.

6.49 After the Covenant had entered into force, Canada proposed to amend the Covenant and to delete Article X. The issue was under discussion before various bodies between December 1920 and September 1923. In the course of these debates, the idea of an amendment was dropped in favour of an interpretative Resolution intended to interpret the Covenant. Such a Resolution, as well as an amendment, could only be passed by a unanimous vote; in 1923, a vote failed to gain unanimous support, and the deliberations came to an end. The substance of the discussions had centred on the issues (i) as to whether the League's Council ought to take into account the geographic situation and the special circumstances in the case of an aggression; and (ii) as to the freedom of each Member State to determine whether unilateral action was required or not in order to fulfil the obligations under the Covenant. In the course of the deliberations, the Commission charged with the preparation of amendments of the Covenant turned to another Commission (chaired by Stuyeken) for a review of the meaning of Article X. In the Report of this latter Commission[41], it is clearly highlighted, again, that the object and purpose of Article X was to prevent any forcible change of boundaries.

6.50 The League was not faced with any situation covered by Article X in the first decade of its existence. However, in late 1931 and 1932, Japan forcefully occupied Manchuria, then a part of China. The first formal action taken against the Japanese aggression was taken by the United States, which issued the famous Stimson letter stating that the United States did not intend to "recognize the legality of any situation de facto" created by Japan[42]; not being a member of the League, the United States made reference to the Kellogg-Briand Pact as the legal basis of its position rather than Article X of the Covenant.

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[40] *See*. Schücking, W. and Wehberg: *Die Satzung des Völkerbundes*, 2nd ed., 1924, pp. 449-450.

[41] Doc. A.24(1) 1921, p. 10.

6.51 However, on 16 January 1932, all members of the Council of the League other than China and Japan, signed and sent the following note to the Government of Japan.

> "The twelve members of the Council recall the terms of Article X of the Covenant, by which all members of the League have undertaken to respect and preserve the territorial integrity and existing political independence of other members. It is their friendly right to direct attention to this provision, particularly as it appears to them to follow that no infringement of the territorial integrity and no change in the political independence of any member of the League brought about in disregard of this ought to be recognized as valid and effectual by the members of the League of Nations."[43]

6.52 Remarkably, in response, Japan did not claim any right to attack the territorial integrity of China, but instead denied that such an attack had occurred[44]. Finally, the League Assembly placed the issue on its agenda. The Assembly squarely and directly addressed the legal issue which had arisen under Article X and decided that the members were obliged not to recognize the consequences of an aggression:

> "The Assembly, considering that the provisions of the Covenant are entirely applicable to the present dispute declares that it is incumbent upon the members of the League of Nations not to recognize any situation, treaty, or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris."

6.53 As to the applicability of this Resolution, both its wording and its legislative history clearly show that it was meant to express a general rule and was not limited to the Manchurian situation[45]. Also, the wording chosen ("...

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[42] Am. J. Int'l. L., Vol. 26, 1932, p. 342.

[43] Ibid., p. 343.

[44] Ibid.

[45] League of Nations, Official Journal Special Supplement 101.

it is incumbent") clearly shows that the Resolution expressed a legal obligation rather than a political commitment[46].

6.54 The fact that the Resolution of March 11, 1932, expressed a general rule valid under the Covenant was underlined when the League Council explicitly recalled its applicability in the context of the so-called Leticia dispute between Peru and Columbia[47].

6.55 While it is true that the League did not subsequently spell out and apply Article X with the same precision in the case of Ethiopia, it must be recalled that the Resolution of 1932 was never rescinded and that, correspondingly Ethiopia remained an official member of the League[48]. The aggressions that occurred in 1939 or in the immediately preceding period cannot be meaningfully reviewed under Article X of the Covenant inasmuch as the League was in the process of disintegration and dissolution, performing its last acts in 1939. Thus, the prohibition of forcible acquisition of territory as reflected in Article X of the Covenant and the 1932 Resolution of the Council will have to be considered, for all legal purposes, as the rule governing during the period between 1920 until 1945 when the United Nations Charter replaced the Covenant.

6.56 Of course, it might be objected in this context that hostilities directed against territory of the Senoussi peoples were not aggression against the territory of a Member of the League and that France therefore had no obligation in relation to such territory. But it would be inconsistent if the system of international law governing war and peace were applied in such a way as to allow the use of force in relation to some territories and to disallow it in relation to others. In modern terminology, rules fundamental to the legal order itself, have a binding nature erga omnes[49]. Key provisions of the Covenant itself confirm this view. According to Article X, any war or threat of war was declared a matter of concern to the whole League, "whether immediately affecting any of the Members of the League or not". Thus, the reaction of the League did not at all depend upon membership of the League by the parties to the war. This scheme necessarily implied that members and non-members were, as regards the obligations in Article X, subject to the same obligation. The same principle underlies the rules embodied in Article XVII and Article XVI. Article XVII concerned disputes between members and non-members of the League. In such a case, the League would require the non-member "to accept the obligations of membership in the League for the purposes of such dispute". In case the non-member declined such an obligation and chose to resort to war "the provisions of Article XVI shall be applicable as against the state taking such actions". Article XVI provided for sanctions on the part of all members of the League in case of an attack against any member. Thus, the fundamental idea that with regard to war and peace all subjects of international law enjoy the same rights and obligations forms the basis of the applicable rules contained in the Covenant itself.

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[46] See. Sharp: Non-Recognition as a Legal Obligation 1775-1934, p. 191; Garner: "Non-Recognition of Illegal Territorial Annexations" Am. J. Int'l. L., Vol. 30, 1936, p. 679; Lauterpacht, H.: "Règles Générales du Droit de Paix", (Hague Recueil 162; 1937, p. 293); see also Schindler, D.: Die Verbindlichkeit der Beschlüsse des Völkerbundes, 1927, p. 14; the opposite view of Brierly, J. L.:, "The Meaning and Legal Effect of the Resolution of the League of Nations of March 11" (192, BYIL, Vol., 16, 1935, p. 159), has found no support.

[47] See. Resolution of March 18, 1933, League of Nations, Official Journal 1933, p. 526.

[48] See. League Documents, Members of the League and Composition of the Council, September 21 1938, p. 2.

6.57 In summary, it is clear that the legal order as it evolved after 1919 and as it was explicitly laid down in Article X of the League's Covenant, prohibited France from acquiring new territory in a forcible manner in and after the 1920s.

(ii) The General Treaty for the Renunciation of War of 1928

6.58 It may be recalled that the 1928 Kellogg-Briand Pact, or General Treaty for the Renunciation of War, sprang from a French initiative[50]. So far as France was concerned, the proposed treaty would not be a new obligation, since it reiterated the principle of the prohibition of war clearly contained in the League Covenant.[51] It was a new obligation for States not parties to the Covenant, such as the United States. The final text of the Treaty, as agreed, provided in Article 1:

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[49] See, the concept of erga omnes obligations as expressed by the Court in the Barcelona Traction case. I.C.J. Reports 1970, p. 32, para. 33; and see, also, Article 19 of the I.L.C. Draft on State Responsibility.

[50] French Ambassador to the U.S. Secretary of State, 5 January 1928: U.S. For. Rel. (1928), I, p. 1: France originally envisaged a bilateral treaty, and the U.S. proposed a general treaty.

> "The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.[52]"

France ratified the Treaty on 22 April 1929.

6.59 In fact M. Briand later took the view that the 1928 Kellogg-Briand Pact went beyond the Pact of the League: for the latter allowed recourse to war for fulfilling the requirements of pacific settlement imposed by the Pact, whereas under the General Treaty "le Pacte de Paris met la guerre hors la loi.[53]"

6.60 In the present case the difference between the obligations of France under the two instruments has no practical relevance. For France did not choose to treat its hostilities against the Senoussi peoples as a "dispute" to be referred to either legal or political settlement under Article XIII of the League Covenant. The hostilities were illegal *per se*, under both instruments. Nor was that illegality affected by the absence of protest, for the prohibition of war was, subject to the obligations of peaceful settlement and the right of self-defence, otherwise absolute.

6.61 The implications of both the Pact of Paris and the Covenant of the League for the legality of an armed incursion into the territory of another State, otherwise than in self-defence, were both clear and supported by France: such armed incursions were illegal.

6.62 Thus, on 7 October 1935, France subscribed to the Report of the Committee of Six to the Council of the League, concluding that in invading

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[51] French Ambassador to U.S. Secretary of State, 21 January 1928: *ibid.*, p. 7: "...the terms of the multipartite treaty are inspired by the formula which has already gained the unanimous adherence of all of the State members of the League of Nations...".

[52] *Ibid.*, p. 155.

[53] *Journal Officiel*, Débats parlementaires, Sénat, 1929, p. 21.

Ethiopia, Italy had violated both treaties[54]. The official French communiqué, published on 1 August 1936 following Hailie Selassi's address to the League Assembly, recorded that France could not -

> "... donner son acquiescement à une action quelconque de l'Italie portant atteinte à l'intégrité territoriale et à l'indépendance politique de l'Ethiopie, garanties par le Pacte[55]."

6.63 It is not clear how France sought to reconcile its own use of force against the Senoussi peoples with its forthright condemnation of the Italian use of force against the Ethiopians. It could not be on the basis of Ethiopian membership in the League for, as mentioned earlier, the obligations of both the Covenant and the 1928 Pact are properly regarded as obligations *erga omnes*[56]. Nor could it be on the basis of timing: that the use of force by France occurred *before* the obligations were assumed by France. It has already been shown that, prior to 1920, French forces had only made military incursions into the borderlands regions. There had been no occupation, or conquest. Thus, any claim of occupation or conquest must rest on the use of force after that date.

6.64 What happened after 1920 was "mere usurpation", based on conquest, and thus contrary to international law. The re-occupation of parts of the borderlands by France occurred because of the influx of refugees into the area, fleeing southwards from the Italian advance in Tripolitania. As the official French military history explains it:

> "L'avance italienne en Tripolitaine insoumise provoqua dès 1928 un exode de populations nombreuses qui vinrent se réfugier en territoire français.
>
> Pour éviter la formation au Tibesti de rassemblements non controlés, l'occupation de ce massif fut decidée et confiée aux troupes de l'Afrique équatoriale française.

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[54] *R.G.D.I.P.* (1936), Vol. 43, Documents, pp. 103-105.

[55] Cited in Rousseau, C.: "Le conflit italo-ethiopien", p. 587.

[56] For the concept of *erga omnes* obligations, as obligations owed to the community at large, and enforceable by any member of that community, *see*, Justc Ruiz: "Las obligaciones erga omnes en derecho internacional publico" (*Estudios de derecho internacional*, *Homenaje al professor Miaja de la Muela*, 1979, p. 230); Tanzi: "Is Damage a Distinct Condition for the Existence of an Internationally Wrongful Act?" (U.N. Codification of State Responsibility, Spinedi and Simma Eds, 1987, pp. 15-20). And *see*, the *Barcelona Traction, Light and Power Company, Limited, Second Phase, Judgement* *I.C.J. Reports 1970*, p. 32, para. 34.

> De décembre 1928 à mars 1929, le chef de bataillon Aubert, commandant la circonscription du Borkou, avec le groupe nomade de la 7ème compagnie, sous les ordres du lieutenant Mear, effectua une reconnaissance du Tibesti dans des conditions exceptionnellement difficiles. Il opéra sa liaison près de Bardaï avec le chef de bataillon Rottier venu de Bilma.
>
> Une compagnie fut créée pour occuper Bardaï et un nouveau groupe nomade fut chargé d'assurer la sécurité du versant méridional du Tibesti d'Abo à Zouar[57]."

6.65 Thus, there was no doubt that this was a military occupation, a taking of the territory by force after France was bound by the League Covenant and the Pact of Paris. It was in no sense a creation of a civil administration: it was a military invasion, pure and simple. The fact that, on this occasion, it seems to have met with no organised, armed resistance does not affect its illegality, any more than the German invasions of Austria and Czechoslovakia some few years later were affected by the lack of armed resistance. Such acts remain acts of aggression (even if not aggressive war)[58] and are illegal whether or not they met with armed resistance.[59]

6.66 Moreover, the notion of "inter-temporal" law is clearly relevant. As developed by Judge Huber in the Palmas Island Case[60], and now generally accepted, it requires a State asserting title over territory to maintain that title in accordance with the changing requirements of the law. So that, even if France had acquired a valid title to the territory prior to 1920 - which is not accepted - it would have still been incumbent on France to maintain that title in accordance with the evolving requirements of the law after that date. Thus, as the prohibitions of the League Covenant, the Pact of Paris and, finally, the United Nations Charter came into effect and prohibited the use of force against the territorial integrity of another, so a title maintained by force would cease to have validity. And there is no doubt that, until 1960 (indeed, until 1965), France maintained control over this territory by force, after which time rebellion and civil war broke out.

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[57] Histoire Militaire de l'Afrique Equatoriale Française, (1931), p. 480. (A copy of this page is attached as Exhibit 26.)

[58] See, Memorandum submitted by the Secretary-General, the Charter and Judgment of the Nuremberg Tribunal, New York (1949), p. 48.

[59] See, for example, the Security Council's convention of "repeated acts of aggression" by Southern Rhodesia against Zambia, in military incursions which met with no armed opposition, in S.C. Resol. 455 (1979) of 23 November 1979.

[60] III U.N.R.I.A.A., 831 at pp. 845-846.

6.67 Thus, we are faced with the same evolution of the law that required the elimination of colonialism as an alien control over another's territory maintained by force. In most cases the validity of a "colonial" title by reference to the legal rules of the 17th, 18th, or 19th Century was unquestioned. But it became highly questionable by reference to the contemporary rules of the 20th Century, in particular the prohibition of the use of force as a means of acquiring territory, or retaining it, contrary to the wishes of the indigenous inhabitants.[61] Thus, it can be seen that France had no legal title over the borderlands region to transfer in 1960 - whether to Chad or anyone else[62].

6.68 There is yet a further factor. France has asserted that its title rested on "actes internationaux" in force in December 1951. This French view was wrong: under these "actes", no conventional title existed at that time east of Toummo. Thus, the only other basis for a claim to title by France would have been conquest (not occupation of terra nullius). But in fact conquest - meaning the annihilation of the enemy forces and the completion of control of the territory - did not, under traditional law, serve to confer a legal title to the territory[63]; a "subjugation" had to occur, evidenced by the formal annexation of the territory subsequent to a treaty. This did not occur.

SECTION 5. The Role of "Effectivité"

6.69 In view of the status of the disputed area during the relevant period and the absence of a valid French title to these areas, it remains to examine the relationship between "effectivité", on the one hand, and legal title, on the other.

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[61] See, the Declaration on Principles of International Law concerning Friendly Relations, U.N.G.A. Res. 2625 (XXV): "Every State has the duty to refrain from any forcible action which deprives peoples... of their right to self determination and freedom and independence." Also the declaration on the Granting of Independence to Colonial Peoples and Territories, U.N.G.A. Res. 1514 (XV), espec., para. 4.

[62] This view would accord with the general theory that a colonial power cannot determine the entity to which title is transferred on de-colonisation. The title exists in the indigenous peoples, and it is their right, as part of the right of self-determination, to decide which entity shall be the territorial sovereign for the future. See, the examples of the cases of Eritrea, West Irian, British Togoland, British Cameroons, Mauritania, discussed by Rigo Sureda: The Evolution of the Right of Self-Determination, 1973, pp. 133-172.

[63] See, for example, Oppenheim, L.: International Law, Vol. II, Sixth Edition, 1940, pp. 466-8.

6.70 This relationship was carefully examined by the Court in its 1986 Judgment on the Frontier Dispute case. It said:

> "... a distinction must be drawn among several eventualities. Where the act corresponds exactly to law, where effective administration is additional to the uti possidetis juris, the only role of effectivité is to confirm the exercise of the right derived from a legal title. Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title. In the event that the effectivité does not co-exist with any legal title, it must invariably be taken into consideration. Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The effectivités can then play an essential role in showing how the title is interpreted in practice"[64].

6.71 Following this reasoning, it is apparent that effectivité cannot play a dispositive role in this case for at least four reasons:

- The legal title to the area in dispute has been shown to have resided in the indigenous Senoussi peoples, the Ottoman Empire and, later, Italy. This is the title that Libya inherited. Inasmuch as there is a valid, pre-existing legal title, the role of effectivité would only be to confirm that title. Moreover, even if French effectivité in the area could be demonstrated, which is not the case, preference would still be given to the holder of the title: i.e. Libya;

- France never, in fact, effectively occupied the Libya-Chad borderlands (whether by occupation or by conquest) until after 1929, by which time occupation by way of force was invalid under international law;

- France's repeated position, in particular as explained to the U.N. and as set forth in the 1955 Treaty, was that the international agreements in force were the sole basis of establishing the boundary east of Toummo, thus rejecting colonial effectivité as a basis of title; and

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[64] Frontier Dispute, Judgment, I.C.J. Reports 1986, pp. 586-587, para. 63.

- In any event, the territories in question were not terra nullius, so that France's alleged occupation of the region was, in the words of Chief Justice Hughes of the United States Supreme Court, "mere usurpation"[65]

6.72 It must be pointed out that Libya does not base its claim in this case on colonial effectivité. The part of the borderlands to which Libya asserts it has clear title comprises regions, title to which lay in the indigenous peoples. Libya inherited this title when it became an independent State in 1951. These same regions fell within the Tripolitanian hinterland claimed by the Ottoman Empire based on the close links (administrative, religious, legal, cultural, economic and commercial) between these regions and the regions to the north, which were under Ottoman sovereignty. This claim was reasserted by the Ottoman Empire when its forces occupied the borderlands between 1908 and 1912, withdrawing only as a result of the war with Italy and the 1912 Treaty of Ouchy. These rights and title were passed on to Italy in 1912 by the Treaty of Ouchy and coalesced with the parallel title of the peoples, which Libya inherited in 1951.

6.73 Nonetheless, to the extent that there was effectivité in the disputed area during the critical period, it was exercised by the peoples and the Ottomans who, unlike the French, were not intent on destroying or subjugating the local populace, but who contributed to the political, military, commercial, legal and religious administration of the area.

SECTION 6. The Attempts to Dispose of Title to the Libya-Chad Borderlands

6.74 It follows from the preceding that the attempt by France to dispose of title to this territory by the Franco-Italian Treaty of 1935 could have no effect in law, for the reason that France had no lawful title to dispose of. In the absence of conventional title or of any agreements with the local rulers, France could found its title only on conquest, but any such conquest, even had it occurred, would have arisen - and hence French title would have been "established" - at a time when international law no longer permitted the acquisition of title to territory by conquest.

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[65] See, fn. 20, above. It may be added, as noted in paras. 5.06-5.07, that the General Act of the Congress of Berlin of 1885 had no application to these territories.

6.75 The position of Italy was different for, as explained in Part V above, the Ottoman rights and titles had been transferred to Italy by the Treaty of Ouchy in 1912. And since this transfer of title occurred prior to the League Covenant, it is not possible to regard the transfer as invalidated by reference to the rules of law prohibiting the acquisition of territory by war or the use of force. In any event, the Ottoman rights and titles (and hence those of Italy) were not based on the acquisition of the regions by the use of force.

6.76 If, as seen above, France had no lawful title to the borderlands regions to dispose of in 1935, or to pass on to Chad in 1960, where did title to these regions reside? The answer is two-fold. First, and foremost, it resided in the indigenous peoples who inhabited these regions. Second, a parallel and compatible title resided in the Ottoman Empire, since the borderlands lay within the territories claimed by the Ottoman Empire on the basis of religious, legal, cultural and commercial ties going back a long time, and confirmed by their presence and their understandings with the indigenous peoples.

6.77 It is not necessary to attempt to define the relationship between these two parallel titles, for they were not only compatible but also interdependent - much like the relationship between the Ottomans and the Senoussi in the period after 1900, when they united their forces to oppose the French invasion. In the letter addressed in 1911 by the Head of the Senoussi to the "Civil Nations" referred to above in paragraph 5.222, protesting the acts of violence being carried out by the French against the Order, the zawiyas and the Senoussi peoples, Sayyid Ahmad al-Sharif specifically acknowledged the Senoussi Order's allegiance to the Sultan[66]. A year later, in the Firman made part of the Treaty of Ouchy, the Sultan granted automony to the inhabitants of Tripolitania-Cyrenaica, who included the Senoussi peoples in the borderlands regions forming the hinterland of Tripolitania-Cyrenaica. In the Treaty itself, Italy undertook to respect the autonomy so granted to the inhabitants[67]. Thus, the title inherited by Italy continued to coexist with the title of the peoples in the Libya-Chad borderlands, just as the Ottoman title had. When Libya attained independence in 1951, these two titles coalesced into the title of the State of Libya.

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[66] Exhibit 47.

SECTION 7. The Right of Self Determination of Peoples

6.78 Libya became an independent State in 1951 after the peoples of Tripolitania, Cyrenaica and Fezzan had been consulted on the question of Libya's independence as a unified State by the Four Power Commission, as called for in Annex XI of the 1947 Italian Peace Treaty. But the boundaries of Libya were not brought up at that time.

6.79 This consultation with the Libyan peoples reflected the right of self-determination, which today is a rule of jus cogens. In the Arbitral Award of 31 July 1989 between Guinea-Bissau and Senegal, the majority saw a need to identify a point in time at which "the norm which limits the capacity of the State to conclude treaties upon the initiation of a process of liberation" begins to take effect[68]. The Award identified that point in time as "the moment from which its (the liberation movements) activity acquired an international impact"[69].

6.80 The right of self-determination here reposes in the indigenous peoples inhabiting the Libya-Chad borderlands. The point in time mentioned in the Arbitral Award, at which this right of these peoples, who were led by the Sensoussi Order, began to take effect, was at least by 1919. For by then the Senoussi Order - under whose leadership the fight by the indigenous peoples was conducted against the military invasions of the French in the south and against the Italians in the north - had been accorded recognition as a de facto government and virtually a sovereign power by a number of States:

- by the Ottoman Empire at the end of the 19th Century;
- by Great Britain and Italy in the series of agreements entered into with the Head of the Senoussi prior to 1919;

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[67] See, para. 5.134, et seq., above.

[68] Award, para. 52: English translation in the Annex to the Application of Guinea Bissau to the I.C.J., 23 August 1989.

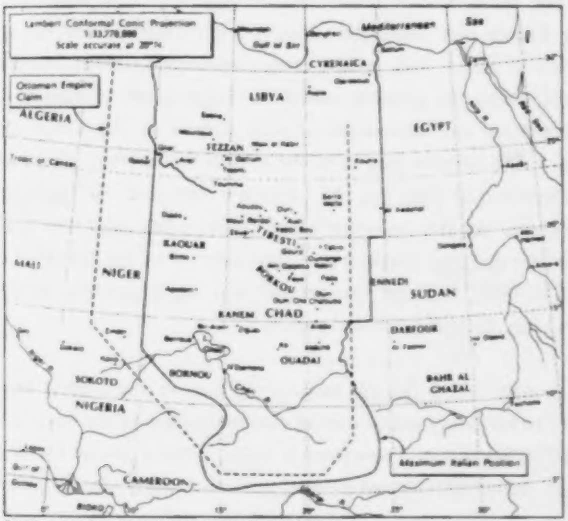
[69] Ibid., para 51.

- by France in its intermittent negotiations with the Order between 1911 and 1914.

CHAPTER III. LIBYA'S CLAIM IN THIS CASE

6.81 This Chapter is devoted solely to illustrating the specific claim of Libya set out in paragraph 3 of the Submissions.

Map No. 69



Specially prepared for presentation to the International Court of Justice

6.82 On the basis of succession to the Ottoman Empire alone, Libya would have had a legitimate claim to a very large area, co-extensive with the Ottoman rights and titles. This area is shown on Map No. 69, together with Italy's maximum position as set out by the Italian Colonial Ministry in 1920[70].

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[70] This map appears first at para. 5.252, above. The map shows that, in the south, the claim as reflected in Italy's maximum program was even more extensive.

6.83 Since the time the Ottoman claim was asserted in 1890, there has been an evolution of events, including the coming into existence of other new States, as well as Chad, that must be taken into account. Certainly the situation as to Chad is different from these other States, for at least three reasons. First, the Ottoman Empire had legitimate rights and titles over the entire area, which it reasserted with respect to the borderlands by its presence up until the Treaty of Ouchy. These were legally transferred to Italy by the Treaty and eventually to Libya. Second, the title over these areas held by the indigenous peoples led by the Senoussi remained intact. Third, the French military encroachments north of 15°N latitude did not generally occur until after 1920, by which time France was bound by solemn treaty commitments not to acquire territorial title by force. And, in fact, France never did establish control north of 15°N latitude - with the possible exception of the north of Kanem - so as to receive recognition and acceptance of such control by the world community. Accordingly, Libya submits that, as to the part of the territory lying north of the boundary illustrated on Map No. 105, Libya has clear title. As Maps Nos. 106 to 109 demonstrate, the area to which Libya claims it has clear title is a practical reflection of the de facto situation as it developed since the Ottoman claim was first made in 1890, both on the ground and in the claims, proposals and agreements of the various interested parties.

6.84 Map No. 105 sets out the area to which Libya asserts it has clear title. The boundary would start at the intersection of the eastern boundary of Niger and 18°N latitude. From there it would follow a precise southeast line to 15°N latitude, following then that parallel to the existing boundary between Chad and Sudan.

6.85 Maps Nos. 106, 107, 108 and 109 compare Libya's claim to four other relevant lines:

- The de facto line between Ottoman and French forces in the period 1910-1913 (Map No. 106)[71];
- The line proposed by the vilayet of Tripoli to the Porte in 1911 in preparation for the negotiations expected to take

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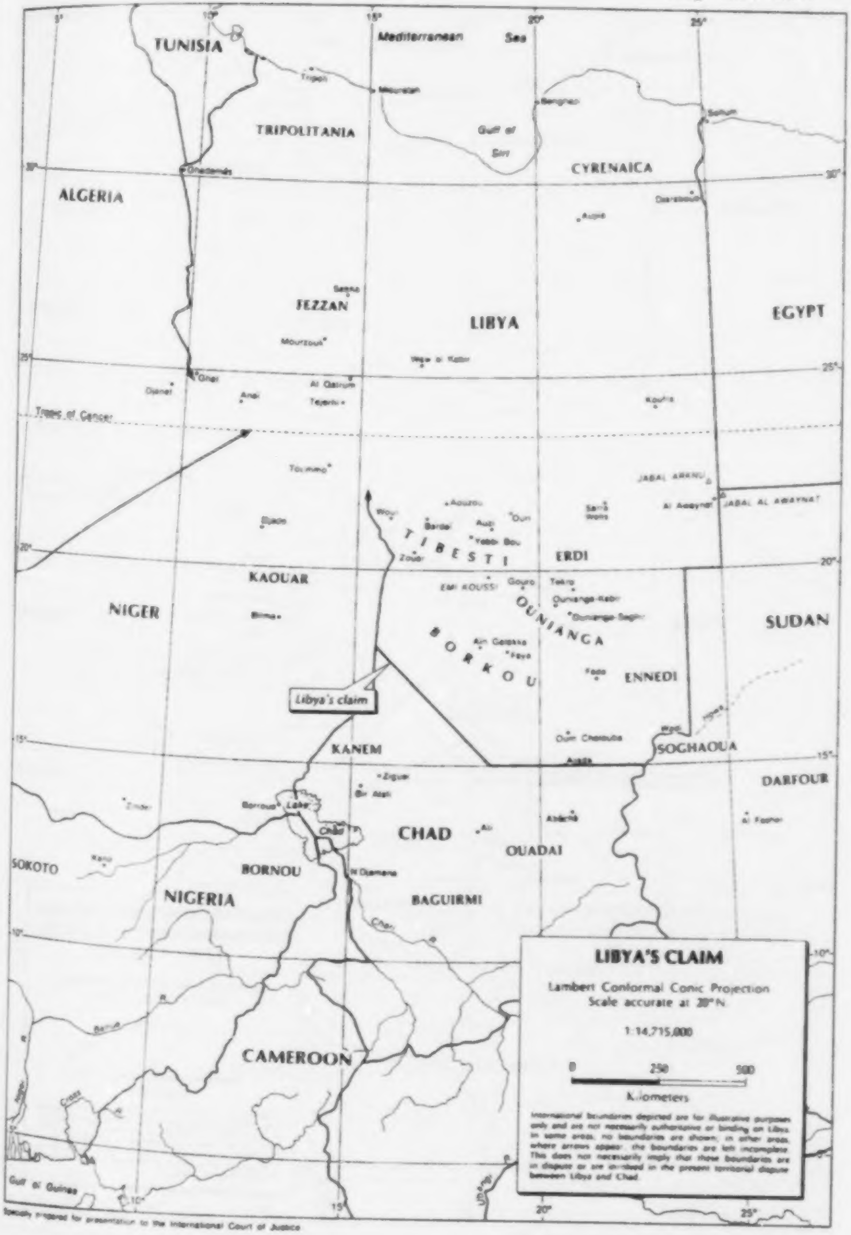
[71] See, para. 4.142 et seq., above.

Map No. 105



LIBYA'S CLAIM

Lambert Conformal Conic Projection
Scale accurate at 20°N.

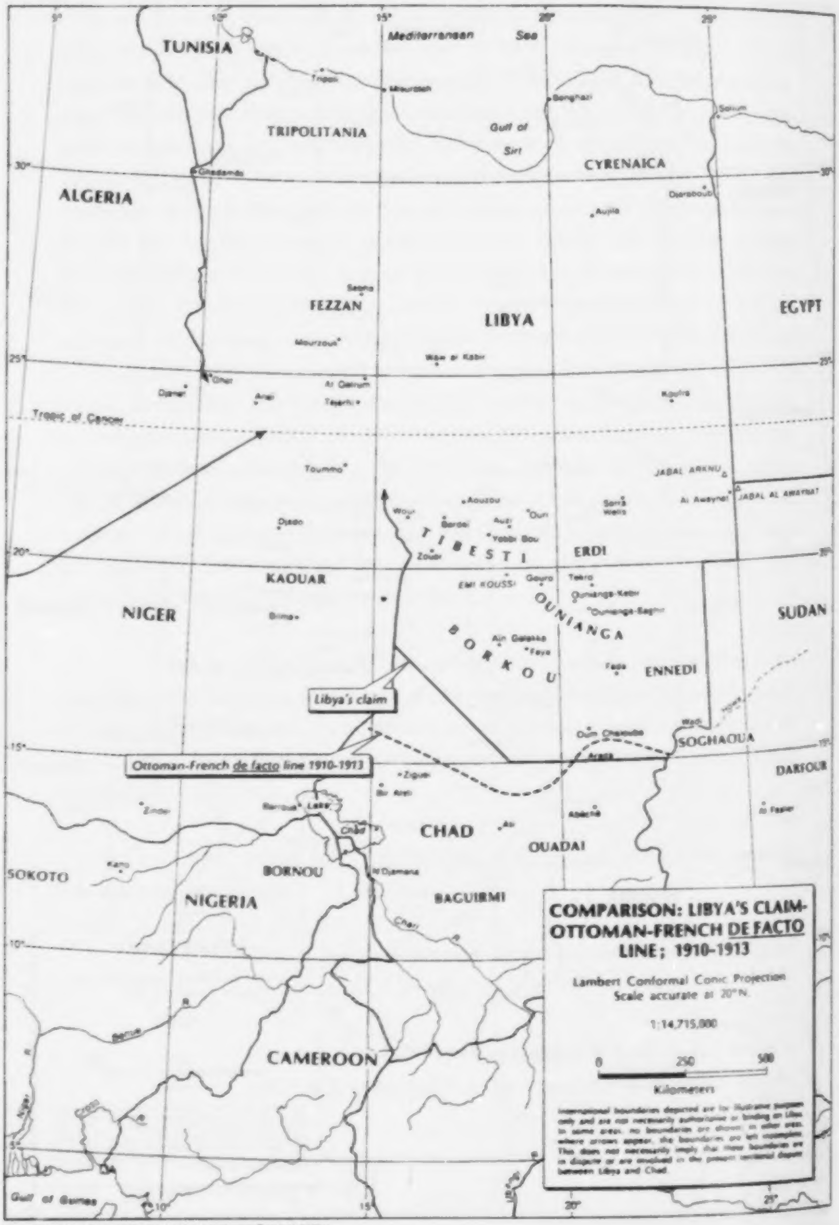
1:14,715,000

0 250 500
Kilometers

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

Specially prepared for presentation to the International Court of Justice

Map No.106



COMPARISON: LIBYA'S CLAIM-OTTOMAN-FRENCH DE FACTO LINE; 1910-1913

Lambert Conformal Conic Projection
Scale accurate at 20°N.

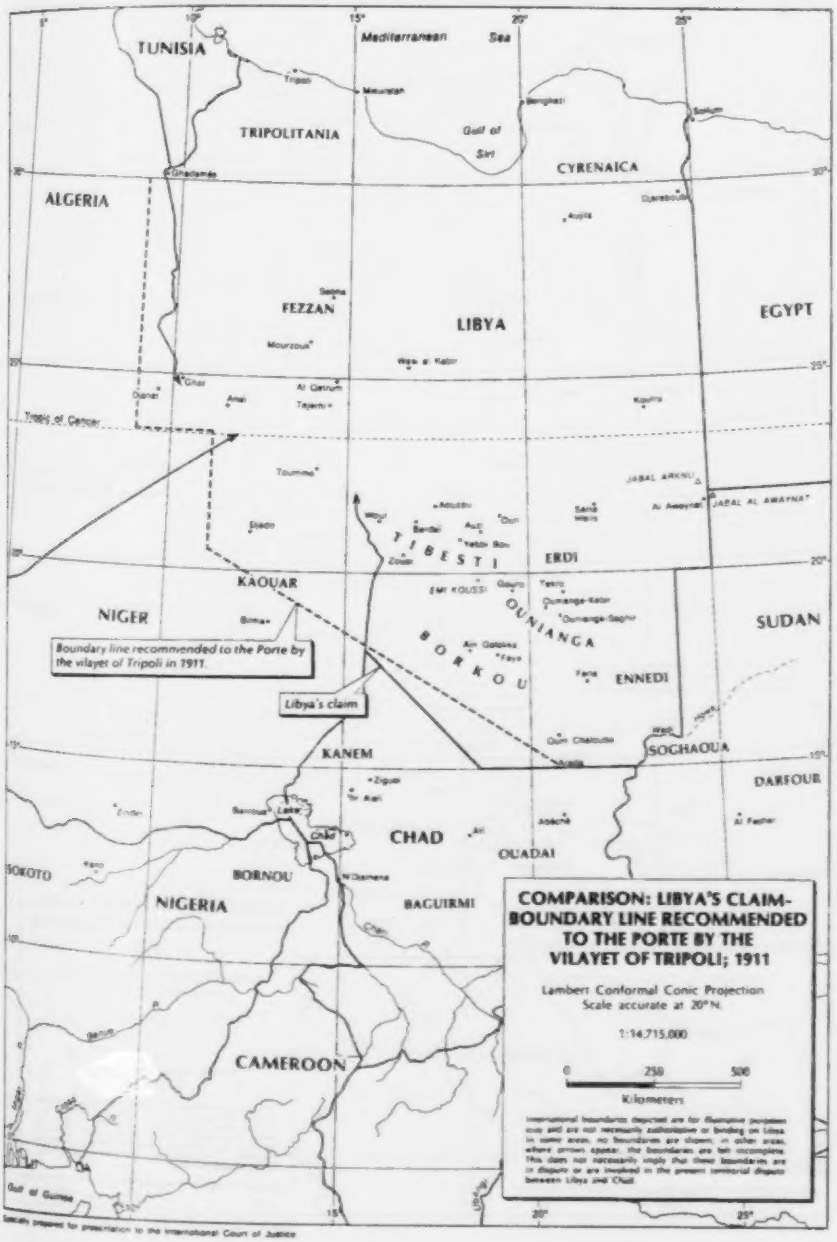
1:14,715,000

0 250 500
Kilometers

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

Specially prepared for presentation to the International Court of Justice

Map No. 107



COMPARISON: LIBYA'S CLAIM-BOUNDARY LINE RECOMMENDED TO THE PORTE BY THE VILAYET OF TRIPOLI; 1911

Lambert Conformal Conic Projection
Scale accurate at 20°N.

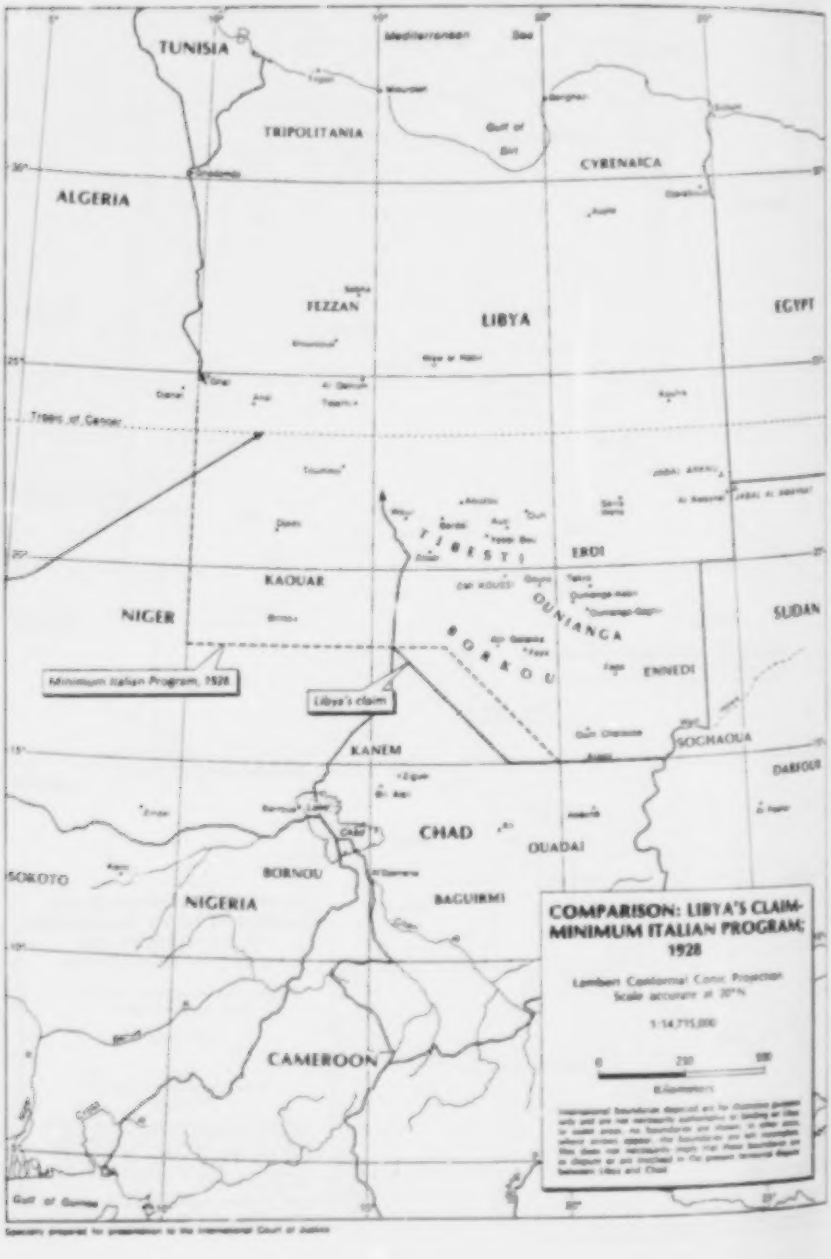
1:14,715,000

0 250 500
Kilometers

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

Specially prepared for presentation to the International Court of Justice

Map No. 108



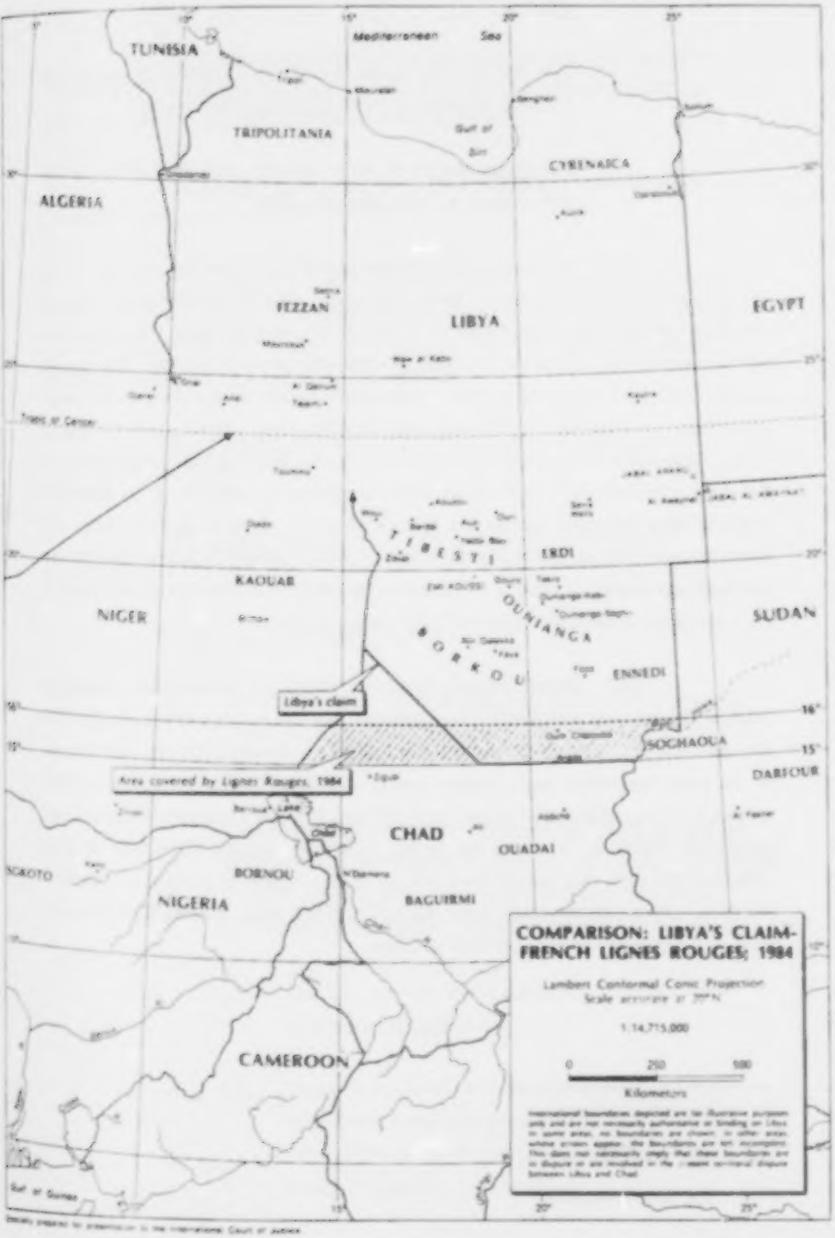
COMPARISON: LIBYA'S CLAIM-MINIMUM ITALIAN PROGRAM; 1928

Lambert Conformal Conic Projection
Scale accurate at 20°N

1:14,715,000

Specially prepared for presentation to the International Court of Justice

Map No. 109



COMPARISON: LIBYA'S CLAIM-FRENCH LIGNES ROUGES; 1984

Lambert Conformal Conic Projection
Scale accurate at 20°N

1:14,715,000

Specially prepared for presentation to the International Court of Justice

place shortly with France to delimit this boundary (Map No. 107)[72];

- The line set out in the Minimum Program of the Italian Colonial Ministry in 1928 (Map No. 108)[73]; and

- The lignes rouges of 15°N latitude, and then 16°N, agreed with France in 1984 (Map No. 109)[74].

6.86 These four lines demonstrate two common elements, both of which are reflected in Libya's claim. The first is that the evolution of events in the area discloses the acceptance of 15°N latitude as a de facto boundary line, north of which the title of the Senoussi peoples was never displaced. The second element concerns the western sector of the borderlands - that is the northern part of Kanem - an area that in 1900 was under firm Senoussi control when the zawiya at Bir Alali was a flourishing center of religion and learning and a focal point of Senoussi administration (and of necessity a military stronghold of the Senoussi tribes in their struggle against the French invasion of their lands). After the destruction of this zawiya by French forces, it was occupied by them. This forced the Senoussi center of control to be moved north to Aïn Galakka from where it took instructions from the Senoussi leadership in Gouro.

6.87 When Ottoman forces occupied the borderlands, starting in 1908, in the western sector of the borderlands they did not descend south of 18°N latitude - the east/west line on which Aïn Galakka is located. On the other hand, in the east, they went much further south - to Oum Chalouba (south of 16°N latitude). As is reflected in Maps Nos. 107 and 108, the recommendation of the vilayet of Tripoli in 1911 and the Italian Colonial Ministry's Program of 1928 reflected this fact, and would have left all of the region of Kanem to France. Similarly, Libya's claim would leave Kanem to Chad while placing all of Ennedi, Borkou, Ounianga, Tibesti and Erdi in Libya.

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[72] See, para. 5.114, above.

[73] See, para. 5.254, above.

[74] See, para. 5.568, above.

SUBMISSIONS

Having regard to the various international treaties, agreements, accords and understandings and their effect or lack of effect on the present dispute, as set out in preceding parts of this Memorial;

In view of the other facts and circumstances having a bearing on this case, as discussed above;

In the light of the conduct of the Parties, of the conduct of other States or political, secular or religious forces, whose conduct bears on the rights and titles claimed by the Parties, and of the conduct of the indigenous peoples whose territories are the subject of this dispute;

In application of the principles and rules of international law of relevance to this dispute;

May it please the Court, rejecting all contrary claims and submissions:

To adjudge and declare, as follows:

1. That there exists no boundary, east of Toummo, between Libya and Chad by virtue of any existing international agreement.

2. That in the circumstances, therefore, in deciding upon the attribution of the respective territories as between Libya and Chad in accordance with the rules of international law applicable in the matter, the following factors are relevant:

    (i) that the territory in question, at all relevant times, was not terra nullius;

    (ii) that title to the territory was, at all relevant times, vested in the peoples inhabiting the territory, who were tribes, confederations of tribes or other peoples owing allegiance to the Senoussi Order who had accepted Senoussi leadership in their fight against the encroachments of France and Italy on their lands;

(iii) that these indigenous peoples were, at all relevant times, religiously, culturally, economically and politically part of the Libyan peoples;

(iv) that, on the international plane, there existed a community of title between the title of the indigenous peoples and the rights and titles of the Ottoman Empire, passed on to Italy in 1912 and inherited by Libya in 1951;

(v) that any claim of Chad rests on the claim inherited from France;

(vi) that the French claim to the area in dispute rested on "actes internationaux" that did not create a territorial boundary east of Toummo, and that there is no valid alternative basis to support the French claim to the area in dispute.

3. That, in the light of the above factors, Libya has clear title to all the territory north of the line shown on Map 105, that is to say the area bounded by a line that starts at the intersection of the eastern boundary of Niger and 18°N latitude, continues in a strict southeast direction until it reaches 15° N latitude, and then follows this parallel eastwards to its junction with the existing boundary between Chad and Sudan.

(Signed) ....
Abdullati Ibrahim El-Obeidi
Agent of the Socialist People's
Libyan Arab Jamahiriya

INTERNATIONAL COURT OF JUSTICE

TERRITORIAL DISPUTE
(LIBYAN ARAB JAMAHIRIYA/CHAD)

MEMORIAL

SUBMITTED BY THE

GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

INTERNATIONAL ACCORDS AND AGREEMENTS ANNEX

VOLUME 2

26 AUGUST 1991

Annex 1

GENERAL ACT OF THE CONFERENCE OF BERLIN, SIGNED 26 FEBRUARY 1885

Acte général de la conférence de Berlin, 26 février 1885. De Martens, G. F.:
Nouveau recueil général de traités, 2ᵉ série, vol. X, Leipzig,
Librairie Hans Buske, 1885, pp. 414-427
and translation, in Hertslet, E.: *The Map of Africa by Treaty*,
Vol. II, 3rd ed., London, 1909.
Reprinted by Frank Cass and Co., 1968, pp. 468-486.

Annexe au Protocole No. 10.

[Texte définitif.]

Acte général de la Conférence de Berlin.

Au Nom de Dieu Tout-Puissant.

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, Sa Majesté l'Empereur d'Autriche, Roi de Bohême etc. et Roi Apostolique de Hongrie, Sa Majesté le Roi de Belges, Sa Majesté le Roi de Danemark, Sa Majesté le Roi d'Espagne, le Président des États-Unis d'Amérique, le Président de la République Française, Sa Majesté la Reine du Royaume-Uni de la Grande Bretagne et d'Irlande, Impératrice des Indes, Sa Majesté le Roi d'Italie, Sa Majesté le Roi des Pays-Bas, Grand-Duc de Luxembourg etc., Sa Majesté le Roi de Portugal et des Algarves etc. etc. etc., Sa Majesté l'Empereur de Toutes les Russies, Sa Majesté le Roi de Suède et de Norvège etc. etc. et Sa Majesté l'Empereur des Ottomans,

Voulant régler dans un esprit de bonne entente mutuelle les conditions les plus favorables au développement du commerce et de la civilisation dans certaines régions de l'Afrique, et assurer à tous les peuples les avantages de la libre navigation sur les deux principaux fleuves Africains qui se déversent dans l'Océan Atlantique; désireux d'autre part de prévenir les malentendus et les contestations que pourraient soulever à l'avenir les prises de possession nouvelles sur les côtes de l'Afrique, et préoccupés en même temps des moyens d'accroître le bien-être moral et matériel des populations indigènes, ont résolu, sur l'invitation qui Leur a été adressée par le Gouvernement Impérial d'Allemagne d'accord avec le Gouvernement de la République Française, de réunir à cette fin une Conférence à Berlin et ont nommé pour Leurs Plénipotentiaires, savoir:

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse:
- le Sieur Othon, Prince de Bismarck, Son Président du Conseil des Ministres de Prusse, Chancelier de l'Empire,
- le Sieur Paul, Comte de Hatzfeldt, Son Ministre d'État et Secrétaire d'État du Département des Affaires Étrangères,
- le Sieur Auguste Busch, Son Conseiller Intime Actuel de Légation et Sous-Secrétaire d'État au Département des Affaires Étrangères,

et

le Sieur Henri de Kusserow, Son Conseiller Intime de Légation au Département des Affaires Étrangères;

Sa Majesté l'Empereur d'Autriche, Roi de Bohême etc. et Roi Apostolique de Hongrie:

le Sieur Emeric, Comte Széchényi, de Sárvári Felsö-Vidék, Chambellan et Conseiller Intime Actuel, Son Ambassadeur Extraordinaire et Plénipotentiaire près Sa Majesté l'Empereur d'Allemagne, Roi de Prusse;

Sa Majesté le Roi des Belges:

le Sieur Gabriel, Auguste, Comte van der Straten Ponthoz, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté l'Empereur d'Allemagne, Roi de Prusse,

et

le Sieur Auguste, Baron Lambermont, Ministre d'État, Son Envoyé Extraordinaire et Ministre Plénipotentiaire;

Sa Majesté le Roi de Danemark:

le Sieur Émile de Vind, Chambellan, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté l'Empereur d'Allemagne, Roi de Prusse;

Sa Majesté le Roi d'Espagne:

Don Francisco Merry y Colom, Comte de Benomar, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté l'Émpereur d'Allemagne, Roi de Prusse;

Le Président des États-Unis d'Amérique;

le Sieur John A. Kasson, Envoyé Extraordinaire et Ministre Plénipotentiaire des États-Unis d'Amérique près Sa Majesté l'Empereur d'Allemagne, Roi de Prusse,

et

le Sieur Henry S. Sanford, ancien Ministre;

Le Président de la République Française:

le Sieur Alphonse, Baron de Courcel, Ambassadeur Extraordinaire et Plénipotentiaire de France près Sa Majesté l'Empereur d'Allemagne, Roi de Prusse;

Sa Majesté la Reine du Royaume-Uni de la Grande Bretagne et d'Irlande, Impératrice des Indes:

Sir Edward, Baldwin Malet, Son Ambassadeur Extraordinaire et Plénipotentiaire près Sa Majesté l'Empereur d'Allemagne, Roi de Prusse;

Sa Majesté le Roi d'Italie:

le Sieur Edouard, Comte de Launay, Son Ambassadeur Extraordinaire et Plénipotentiaire près Sa Majesté l'Empereur d'Allemagne, Roi de Prusse;

Sa Majesté le Roi des Pays-Bas, Grand-Duc de Luxembourg etc.:

le Sieur Frédéric, Philippe, Jonkheer van der Hoeven, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté l'Empereur d'Allemagne, Roi de Prusse;

Sa Majesté le Roi de Portugal et des Algarves etc. etc. etc.:

le Sieur da Serra Gomes, Marquis de Penafiel, Pair du Royaume, Son

Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté l'Empereur d'Allemagne, Roi de Prusse,
et
le Sieur Antoine de Serpa Pimentel, Conseiller d'État et Pair du Royaume;

Sa Majesté l'Empereur de Toutes les Russies:
le Sieur Pierre, Comte Kapnist, Conseiller Privé, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté le Roi des Pays-Bas;

Sa Majesté le Roi de Suède et de Norvège etc. etc.:
le Sieur Gillis, Baron Bildt, Lieutenant-Général, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté l'Empereur d'Allemagne, Roi de Prusse;

Sa Majesté l'Empereur des Ottomans:
Méhemed Saïd Pacha, Vézir et Haut Dignitaire, Son Ambassadeur Extraordinaire et Plénipotentiaire près Sa Majesté l'Empereur d'Allemagne, Roi de Prusse,

Lesquels, munis de pleins-pouvoirs qui ont été trouvés en bonne et due forme, ont successivement discuté et adopté:

1° Une Déclaration relative à la liberté du commerce dans le bassin du Congo, ses embouchures et pays circonvoisins, avec certaines dispositions connexes;

2° Une Déclaration concernant la traite des esclaves et les opérations qui sur terre ou sur mer fournissent des esclaves à la traite;

3° Une Déclaration relative à la neutralité des territoires compris dans le bassin conventionnel du Congo;

4° Un Acte de navigation du Congo, qui, en tenant compte des circonstances locales, étend à ce fleuve, à ses affluents et aux eaux qui leur sont assimilées, les principes généraux énoncés dans les articles 108 à 116 de l'Acte final du Congrès de Vienne et destinés à régler, entre les Puissances signataires de cet Acte, la libre navigation des cours d'eau navigables qui séparent ou traversent plusieurs Etats, principes conventionnellement appliqués depuis à des fleuves de l'Europe et de l'Amérique, et notamment au Danube, avec les modifications prévues par les traités de Paris de 1856, de Berlin de 1878, et de Londres de 1871 et de 1883;

5° Un Acte de navigation du Niger, qui, en tenant également compte des circonstances locales, étend à ce fleuve et à ses affluents les mêmes principes inscrits dans les articles 108 à 116 de l'Acte final du Congrès de Vienne;

6° Une Déclaration introduisant dans les rapports internationaux des règles uniformes relatives aux occupations qui pourront avoir lieu à l'avenir sur les côtes du Continent Africain;

Et ayant jugé que ces différents documents pourraient être utilement coordonnés en un seul instrument, les ont réunis en un Acte général composé des articles suivants.

CHAPITRE I.

Déclaration relative à la liberté du commerce dans le bassin du Congo, ses embouchures et pays circonvoisins, et dispositions connexes.

Art. 1. Le commerce de toutes les nations jouira d'une complète liberté :

1° Dans tous les territoires constituant le bassin du Congo et de ses affluents. Ce bassin est délimité par les crêtes des bassins contigus, à savoir notamment les bassins du Niari, de l'Ogowé, du Schari et du Nil, au Nord ; par la ligne de faîte orientale des affluents du lac Tanganyka, à l'Est ; par les crêtes des bassins du Zambèze et de la Logé, au Sud. Il embrasse, en conséquence, tous les territoires drainés par le Congo et ses affluents, y compris le lac Tanganyka et ses tributaires orientaux.

2° Dans la zone maritime s'étendant sur l'Océan Atlantique depuis le parallèle situé par 2° 30′ de latitude Sud jusqu'à l'embouchure de la Logé.

La limite septentrionale suivra le parallèle situé par 2° 30′, depuis la côte jusqu'au point où il rencontre le bassin géographique du Congo, en évitant le bassin de l'Ogowé auquel ne s'appliquent pas les stipulations du présent Acte.

La limite méridionale suivra le cours de la Logé jusqu'à la source de cette rivière et se dirigera de là vers l'Est jusqu'à la jonction avec le bassin géographique du Congo.

3° Dans la zone se prolongeant à l'Est du bassin du Congo, tel qu'il est délimité ci-dessus, jusqu'à l'Océan Indien, depuis le cinquième degré de latitude Nord jusqu'à l'embouchure du Zambèze au Sud ; de ce point la ligne de démarcation suivra le Zambèze jusqu'à cinq milles en amont du confluent du Shiré et continuera par la ligne de faîte séparant les eaux qui coulent vers le lac Nyassa des eaux tributaires du Zambèze, pour rejoindre enfin la ligne de partage des eaux du Zambèze et du Congo.

Il est expressément entendu qu'en étendant à cette zone orientale le principe de la liberté commerciale, les Puissances représentées à la Conférence ne s'engagent que pour elles-mêmes et que ce principe ne s'appliquera aux territoires appartenant actuellement à quelque État indépendant et souverain qu'autant que celui-ci y donnera son consentement. Les Puissances conviennent d'employer leurs bons offices auprès des Gouvernements établis sur le littoral Africain de la mer des Indes afin d'obtenir ledit consentement et, en tout cas, d'assurer au transit de toutes les nations les conditions les plus favorables.

Art. 2. Tous les pavillons, sans distinction de nationalité, auront libre accès à tout le littoral des territoires énumérés ci-dessus, aux rivières qui s'y déversent dans la mer, à toutes les eaux du Congo et de ses affluents, y compris les lacs, à tous les ports situés sur les bords de ces eaux, ainsi qu'à tous les canaux qui pourraient être creusés à l'avenir dans le but de relier entre eux les cours d'eau ou les lacs compris dans toute l'étendue des territoires décrits à l'article 1. Ils pourront entreprendre toute espèce de transports et exercer le cabotage maritime et fluvial ainsi que la batellerie sur le même pied que les nationaux.

Art. 3. Les marchandises de toute provenance importées dans ces territoires, sous quelque pavillon que ce soit, par la voie maritime ou fluviale ou par celle de terre, n'auront à acquitter d'autres taxes que celles qui pourraient être perçues comme une équitable compensation de dépenses utiles pour le commerce et qui, à ce titre, devront être également supportées par les nationaux et par les étrangers de toute nationalité.

Tout traitement différentiel est interdit à l'égard des navires comme des marchandises.

Art. 4. Les marchandises importées dans ces territoires resteront affranchies de droits d'entrée et de transit.

Les Puissances se réservent de décider, au terme d'une période de vingt années, si la franchise d'entrée sera ou non maintenue.

Art. 5. Toute Puissance qui exerce ou exercera des droits de souveraineté dans les territoires susvisés ne pourra y concéder ni monopole ni privilége d'aucune espèce en matière commerciale.

Les étrangers y jouiront indistinctement, pour la protection de leurs personnes et de leurs biens, l'acquisition et la transmission de leurs propriétés mobilières et immobilières et pour l'exercice des professions, du même traitement et des mêmes droits que les nationaux.

Art. 6. Dispositions relatives à la protection des indigènes, des missionnaires et des voyageurs, ainsi qu'à la liberté religieuse.

Toutes les Puissances exerçant des droits de souveraineté ou une influence dans lesdits territoires s'engagent à veiller à la conservation des populations indigènes et à l'amélioration de leurs conditions morales et matérielles d'existence et à concourir à la suppression de l'esclavage et surtout de la traite des noirs; elles protégeront et favoriseront, sans distinction de nationalités ni de cultes, toutes les institutions et entreprises religieuses, scientifiques ou charitables créées et organisées à ces fins ou tendant à instruire les indigènes et à leur faire comprendre et apprécier les avantages de la civilisation.

Les missionnaires chrétiens, les savants, les explorateurs, leurs escortes avoir et collections seront également l'objet d'une protection spéciale.

La liberté de conscience et la tolérance religieuse sont expressément garanties aux indigènes comme aux nationaux et aux étrangers. Le libre et public exercice de tous les cultes, le droit d'ériger des édifices religieux et d'organiser des missions appartenant à tous les cultes ne seront soumis à aucune restriction ni entrave.

Art. 7. Régime postal.

La Convention de l'Union postale universelle revisée à Paris le 1er juin 1878 sera appliquée au bassin conventionnel du Congo.

Les Puissances qui y exercent ou exerceront des droits de souveraineté ou de protectorat s'engagent à prendre, aussitôt que les circonstances le permettront, les mesures nécessaires pour l'exécution de la disposition qui précède.

Art. 8. Droit de surveillance attribué à la Commission Internationale de navigation du Congo.

Dans toutes les parties du territoire visé par la présente Déclaration où aucune Puissance n'exercerait des droits de souveraineté ou de protectorat, la Commission Internationale de la navigation du Congo, instituée en vertu de l'article 17, sera chargée de surveiller l'application des principes proclamés et consacrés par cette Déclaration.

Pour tous les cas où des difficultés relatives à l'application des principes établis par la présente Déclaration viendraient à surgir, les Gouvernements intéressés pourront convenir de faire appel aux bons offices de la Commission Internationale en lui déférant l'examen des faits qui auront donné lieu à ces difficultés.

CHAPITRE II.

Déclaration concernant la traite des esclaves.

Art. 9. Conformément aux principes du droit des gens, tels qu'ils sont reconnus par les Puissances signataires, la traite des esclaves étant interdite, et les opérations qui, sur terre ou sur mer, fournissent des esclaves à la traite devant être également considérées comme interdites, les Puissances qui exercent ou qui exerceront des droits de souveraineté ou une influence dans les territoires formant le bassin conventionnel du Congo déclarent que ces territoires ne pourront servir ni de marché ni de voie de transit pour la traite des esclaves de quelque race que ce soit. Chacune de ces Puissances s'engage à employer tous les moyens en son pouvoir pour mettre fin à ce commerce et pour punir ceux qui s'en occupent.

CHAPITRE III.

Déclaration relative à la neutralité des territoires compris dans le bassin conventionnel du Congo.

Art. 10. Afin de donner une garantie nouvelle de sécurité au commerce et à l'industrie et de favoriser, par le maintien de la paix, le développement de la civilisation dans les contrées mentionnées à l'article 1 et placées sous le régime de la liberté commerciale, les Hautes Parties signataires du présent Acte et celles qui y adhéreront par la suite s'engagent à respecter la neutralité des territoires ou parties de territoires dépendant desdites contrées, y compris les eaux territoriales, aussi longtemps que les Puissances qui exercent ou qui exerceront des droits de souveraineté ou de protectorat sur ces territoires, usant de la faculté de se proclamer neutres, rempliront les devoirs que la neutralité comporte.

Art. 11. Dans le cas où une Puissance exerçant des droits de souveraineté ou de protectorat dans les contrées mentionnées à l'article 1 et placées sous le régime de la liberté commerciale serait impliquée dans une guerre, les Hautes Parties signataires du présent Acte et celles qui y adhéreront par la suite s'engagent à prêter leurs bons offices pour que les territoires appartenant à cette Puissance et compris dans la zone conventionnelle de la liberté commerciale soient, du consentement commun de cette Puissance et de l'autre ou des autres parties belligérantes, placés pour la durée de la guerre sous le régime de la neutralité et considérés comme appartenant à un État non-belligérant; les parties belligérantes renonceraient, dès lors, à étendre les hostilités aux territoires ainsi neutralisés, aussi bien qu'à les faire servir de base à des opérations de guerre.

Art. 12. Dans le cas où un dissentiment sérieux, ayant pris naissance au sujet ou dans les limites des territoires mentionnés à l'article 1 et placés sous le régime de la liberté commerciale, viendrait à s'élever entre des Puissances signataires du présent Acte ou des Puissances qui y adhéreraient par la suite, ces Puissances s'engagent, avant d'en appeler aux armes, à recourir à la médiation d'une ou de plusieurs Puissances amies.

Pour le même cas, les mêmes Puissances se réservent le recours facultatif à la procédure de l'arbitrage.

CHAPITRE IV.

Acte de navigation du Congo.

Art. 13. La navigation du Congo, sans exception d'aucun des embranchements ni issues de ce fleuve, est et demeurera entièrement libre pour les navires marchands, en charge ou sur lest, de toutes les nations, tant pour le transport des marchandises que pour celui des voyageurs. Elle devra se conformer aux dispositions du présent Acte de navigation et aux règlements à établir en exécution du même Acte.

Dans l'exercice de cette navigation les sujets et les pavillons de toutes les nations seront traités, sous tous les rapports, sur le pied d'une parfaite égalité, tant pour la navigation directe de la pleine mer vers les ports intérieurs du Congo, et vice-versâ, que pour le grand et le petit cabotage ainsi que pour la batellerie sur le parcours de ce fleuve.

En conséquence, sur tout le parcours et aux embouchures du Congo, il ne sera fait aucune distinction entre les sujets des États riverains et ceux des non-riverains, et il ne sera concédé aucun privilége exclusif de navigation, soit à des sociétés ou corporations quelconques, soit à des particuliers.

Ces dispositions sont reconnues par les Puissances signataires comme faisant désormais partie du droit public international.

Art. 14. La navigation du Congo ne pourra être assujettie à aucune entrave ni redevance qui ne seraient pas expressément stipulées dans le présent Acte. Elle ne sera grevée d'aucune obligation d'échelle, d'étape, de dépôt, de rompre charge, ou de relâche forcée.

Dans toute l'étendue du Congo, les navires et les marchandises transitant sur le fleuve ne seront soumis à aucun droit de transit, quelle que soit leur provenance ou leur destination.

Il ne sera établi aucun péage maritime ni fluvial basé sur le seul fait de la navigation, ni aucun droit sur les marchandises qui se trouvent à bord des navires. Pourront seuls être perçus des taxes ou droits qui auront le caractère de rétribution pour services rendus à la navigation même, savoir:

1° Des taxes de port pour l'usage effectif de certains établissements locaux tels que quais, magasins, etc. etc.

Le tarif de ces taxes sera calculé sur les dépenses de construction et d'entretien desdits établissements locaux, et l'application en aura lieu sans égard à la provenance des navires ni à leur cargaison.

2° Des droits de pilotage sur les sections fluviales où il paraîtrait nécessaire de créer des stations de pilotes brevetés.

Le tarif de ces droits sera fixe et proportionné au service rendu.

3° Des droits destinés à couvrir les dépenses techniques et administratives, faites dans l'intérêt général de la navigation, y compris les droits de phare, de fanal et de balisage.

Les droits de cette dernière catégorie seront basés sur le tonnage des navires, tel qu'il résulte des papiers de bord, et conformément aux règles adoptées sur le Bas-Danube.

Les tarifs d'après lesquels les taxes et droits, énumérés dans les trois paragraphes précédents, seront perçus, ne comporteront aucun traitement différentiel et devront être officiellement publiés dans chaque port.

Les Puissances se réservent d'examiner, au bout d'une période de cinq ans, s'il y a lieu de reviser, d'un commun accord, les tarifs ci-dessus mentionnés.

Art. 15. Les affluents du Congo seront à tous égards soumis au même régime que le fleuve dont ils sont tributaires.

Le même régime sera appliqué aux fleuves et rivières ainsi qu'aux lacs et canaux des territoires déterminés par l'article 1, paragraphes 2 et 3.

Toutefois les attributions de la Commission Internationale du Congo ne s'étendront pas sur lesdits fleuves, rivières, lacs et canaux, à moins de l'assentiment des États sous la souveraineté desquels ils sont placés. Il est bien entendu aussi que pour les territoires mentionnés dans l'article 1, paragraphe 3, le consentement des États souverains de qui ces territoires relèvent demeure réservé.

Art. 16. Les routes, chemins de fer ou canaux latéraux qui pourront être établis dans le but spécial de suppléer à l'innavigabilité ou aux imperfections de la voie fluviale sur certaines sections du parcours du Congo, de ses affluents et des autres cours d'eau qui leur sont assimilés par l'article 15 seront considérés, en leur qualité de moyens de communication, comme des dépendances de ce fleuve et seront également ouverts au trafic de toutes les nations.

De même que sur le fleuve, il ne pourra être perçu sur ces routes, chemins de fer et canaux que des péages calculés sur les dépenses de construction, d'entretien et d'administration, et sur les bénéfices dus aux entrepreneurs.

Quant au taux de ces péages, les étrangers et les nationaux des territoires respectifs seront traités sur le pied d'une parfaite égalité.

Art. 17. Il est institué une Commission Internationale chargée d'assurer l'exécution des dispositions du présent *Acte* de navigation.

Les Puissances signataires de cet Acte, ainsi que celles qui y adhéreront postérieurement, pourront, en tout temps, se faire représenter dans ladite Commission, chacune par un Délégué. Aucun Délégué ne pourra disposer de plus d'une voix, même dans le cas où il représenterait plusieurs Gouvernements.

Ce Délégué sera directement rétribué par son Gouvernement.

Les traitements et allocations des agents et employés de la Commission Internationale seront imputés sur le produit des droits perçus conformément à l'article 14, paragraphes 2 et 3.

Les chiffres desdits traitements et allocations, ainsi que le nombre, le grade et les attributions des agents et employés, seront inscrits dans le compte-rendu qui sera adressé chaque année aux Gouvernements représentés dans la Commission Internationale.

Art. 18. Les Membres de la Commission Internationale, ainsi que les agents nommés par elle, sont investis du privilége de l'inviolabilité dans l'exercice de leurs fonctions. La même garantie s'étendra aux offices, bureaux et archives de la Commission.

Art. 19. La Commission Internationale de navigation du Congo se constituera aussitôt que cinq des Puissances signataires du présent Acte général auront nommé leurs Délégués. En attendant la constitution de la Commission, la nomination des Délégués sera notifiée au Gouvernement de l'Empire d'Allemagne, par les soins duquel les démarches nécessaires seront faites pour provoquer la réunion de la Commission.

La Commission élaborera immédiatement des règlements de navigation, de police fluviale, de pilotage et de quarantaine.

Ces règlements, ainsi que les tarifs à établir par la Commission, avant d'être mis en vigueur, seront soumis à l'approbation des Puissances représentées dans la Commission. Les Puissances intéressées devront faire connaître leur avis dans le plus bref délai possible.

Les infractions à ces règlements seront réprimées par les agents de la Commission Internationale, là où elle exercera directement son autorité, et ailleurs par la Puissance riveraine.

Au cas d'un abus de pouvoir ou d'une injustice de la part d'un agent ou d'un employé de la Commission Internationale, l'individu qui se regardera comme lésé dans sa personne ou dans ses droits pourra s'adresser à l'Agent Consulaire de sa nation. Celui-ci devra examiner la plainte; s'il la trouve prima facie raisonnable, il aura le droit de la présenter à la Commission. Sur son initiative, la Commission, représentée par trois au moins de ses Membres, s'adjoindra à lui pour faire une enquête touchant la conduite de son agent ou employé. Si l'Agent Consulaire considère la décision de la Commission comme soulevant des objections de droit, il en fera un rapport à son Gouvernement qui pourra recourir aux Puissances représentées dans la Commission et les inviter à se concerter sur des instructions à donner à la Commission.

Art. 20. [illegible] Commission Internationale du Congo, chargée aux termes de l'article 17 d'assurer l'exécution du présent Acte de navigation, aura notamment dans ses attributions:

1° La désignation des travaux propres à assurer la navigabilité du Congo selon les besoins du commerce international.

Sur les sections du fleuve où aucune Puissance n'exercera des droits de souveraineté, la Commission Internationale prendra elle-même les mesures nécessaires pour assurer la navigabilité du fleuve.

Sur les sections du fleuve occupées par une Puissance souveraine, la Commission Internationale s'entendra avec l'autorité riveraine.

2° La fixation du tarif de pilotage et celle du tarif général des droits de navigation, prévus au 2e et au 3e paragraphes de l'article 14.

Les tarifs mentionnés au 1er paragraphe de l'article 14 seront arrêtés par l'autorité territoriale, dans les limites prévues audit article.

La perception de ces différents droits aura lieu par les soins de l'autorité internationale ou territoriale pour le compte de laquelle ils sont établis.

3° L'administration des revenus provenant de l'application du paragraphe 2 ci-dessus.

4° La surveillance de l'établissement quarantenaire établi en vertu de l'article 24.

5° La nomination des agents dépendant du service général de la navigation et celle de ses propres employés.

L'institution des sous-inspecteurs appartiendra à l'autorité territoriale sur les sections occupées par une Puissance, et à la Commission Internationale sur les autres sections du fleuve.

La Puissance riveraine notifiera à la Commission Internationale la nomination des sous-inspecteurs qu'elle aura institués et cette Puissance se chargera de leur traitement.

Dans l'exercice de ses attributions, telles qu'elles sont définies et limitées ci-dessus, la Commission Internationale ne dépendra pas de l'autorité territoriale.

Art. 21. Dans l'accomplissement de sa tâche, la Commission Internationale pourra recourir, au besoin, aux bâtiments de guerre des Puissances signataires de cet Acte et de celles qui y accéderont à l'avenir, sous toute réserve des instructions qui pourraient être données aux commandants de ces bâtiments par leurs Gouvernements respectifs.

Art. 22. Les bâtiments de guerre des Puissances signataires du présent Acte qui pénètrent dans le Congo sont exempts du paiement des droits de navigation prévus au paragraphe 3 de l'article 14; mais ils acquitteront les droits éventuels de pilotage ainsi que les droits de port, à moins que leur intervention n'ait été réclamée par la Commission Internationale ou ses agents aux termes de l'article précédent.

Art. 23. Dans le but de subvenir aux dépenses techniques et administratives qui lui incombent, la Commission Internationale instituée par l'article 17 pourra négocier en son nom propre des emprunts exclusivement gagés sur les revenus attribués à ladite Commission.

Les décisions de la Commission tendant à la conclusion d'un emprunt devront être prises à la majorité de deux tiers des voix. Il est entendu que les Gouvernements représentés à la Commission ne pourront, en aucun cas, être considérés comme assumant aucune garantie, ni contractant aucun engagement ni solidarité à l'égard desdits emprunts, à moins de conventions spéciales conclues par eux à cet effet.

Le produit des droits spécifiés au 3e paragraphe de l'article 14 sera affecté par priorité au service des intérêts et à l'amortissement desdits emprunts, suivant les conventions passées avec les prêteurs.

Art. 24. Aux embouchures du Congo, il sera fondé, soit par l'initiative des Puissances riveraines, soit par l'intervention de la Commission Internationale, un établissement quarantenaire qui exercera le contrôle sur les bâtiments tant à l'entrée qu'à la sortie.

Il sera décidé plus tard, par les Puissances, si et dans quelles conditions un contrôle sanitaire devra être exercé sur les bâtiments dans le cours de la navigation fluviale.

Art. 25. Les dispositions du présent Acte de navigation demeureront en vigueur en temps de guerre. En conséquence, la navigation de toutes les nations, neutres ou belligérantes, sera libre, en tout temps, pour les usages du commerce sur le Congo, ses embranchements, ses affluents et ses embouchures ainsi que sur la mer territoriale faisant face aux embouchures de ce fleuve.

Le trafic demeurera également libre, malgré l'état de guerre, sur les routes, chemins de fer, lacs et canaux mentionnés dans les articles 15 et 16.

Il ne sera apporté d'exception à ce principe qu'en ce qui concerne le transport des objets destinés à un belligérant et considérés, en vertu du droit des gens, comme articles de contrebande de guerre.

Tous les ouvrages et établissements créés en exécution du présent Acte, notamment les bureaux de perception et leurs caisses, de même que le personnel attaché d'une manière permanente au service de ces établissements, seront placés sous le régime de la neutralité et, à ce titre, seront respectés et protégés par les belligérants.

CHAPITRE V.

Acte de navigation du Niger.

Art. 26. La navigation du Niger sans exception d'aucun des embranchements ni issues de ce fleuve, est et demeurera entièrement libre pour les navires marchands, en charge ou sur lest, de toutes les nations, tant pour le transport des marchandises que pour celui des voyageurs. Elle devra se conformer aux dispositions du présent Acte de navigation et aux règlements à établir en exécution du même Acte.

Dans l'exercice de cette navigation, les sujets et les pavillons de toutes les nations seront traités, sous tous les rapports, sur le pied d'une parfaite égalité, tant pour la navigation directe de la pleine mer vers les ports intérieurs du Niger, et vice-versâ, que pour le grand et le petit cabotage, ainsi que pour la batellerie sur le parcours de ce fleuve.

En conséquence, sur tout le parcours et aux embouchures du Niger, il ne sera fait aucune distinction entre les sujets des États riverains et ceux des non-riverains, et il ne sera concédé aucun privilége exclusif de navigation, soit à des sociétés ou corporations quelconques, soit à des particuliers.

Ces dispositions sont reconnues par les Puissances signataires comme faisant désormais partie du droit public international.

Art. 27. La navigation du Niger ne pourra être assujettie à aucune entrave ni redevance basées uniquement sur le fait de la navigation.

Elle ne subira aucune obligation d'échelle, d'étape, de dépôt, de rompre charge, ou de relâche forcée.

Dans toute l'étendue du Niger, les navires et les marchandises transitant sur le fleuve ne seront soumis à aucun droit de transit, quelle que soit leur provenance ou leur destination.

Il ne sera établi aucun péage maritime, ni fluvial, basé sur le seul fait de la navigation, ni aucun droit sur les marchandises qui se trouvent à bord des navires. Pourront seuls être perçus des taxes ou droits qui auront le caractère de rétribution pour services rendus à la navigation même. Les tarifs de ces taxes ou droits ne comporteront aucun traitement différentiel.

Art. 28. Les affluents du Niger seront à tous égards soumis au même régime que le fleuve dont ils sont tributaires.

Art. 29. Les routes, chemins de fer ou canaux latéraux qui pourront être établis dans le but spécial de suppléer à l'innavigabilité ou aux imperfections de la voie fluviale sur certaines sections du parcours du Niger, de ses affluents, embranchements et issues seront considérés, en leur qualité de moyens de communication, comme des dépendances de ce fleuve et seront également ouverts au trafic de toutes les nations.

De même que sur le fleuve, il ne pourra être perçu sur ces routes, chemins de fer et canaux, que des péages calculés sur les dépenses de construction, d'entretien et d'administration, et sur les bénéfices dus aux entrepreneurs.

Quant au taux de ces péages, les étrangers et les nationaux des territoires respectifs seront traités sur le pied d'une parfaite égalité.

Art. 30. La Grande-Bretagne s'engage à appliquer les principes de la liberté de navigation énoncés dans les articles 26, 27, 28, 29, en tant que les eaux du Niger, de ses affluents, embranchements et issues, sont ou seront sous sa souveraineté ou son protectorat.

Les règlements qu'elle établira pour la sûreté et le contrôle de la navigation seront conçus de manière à faciliter autant que possible la circulation des navires marchands.

Il est entendu que rien dans les engagements ainsi pris ne saurait être interprété comme empêchant ou pouvant empêcher la Grande-Bretagne de faire quelques règlements de navigation que ce soit, qui ne seraient pas contraires à l'esprit de ces engagements.

La Grande-Bretagne s'engage à protéger les négociants étrangers de toutes les nations faisant le commerce dans les parties du cours du Niger qui sont ou seront sous sa souveraineté ou son protectorat, comme s'ils étaient ses propres sujets, pourvu toutefois que ces négociants se conforment aux règlements qui sont ou seront établis en vertu de ce qui précède.

Art. 31. La France accepte sous les mêmes réserves et en termes identiques les obligations consacrées dans l'article précédent, en tant que les eaux du Niger, de ses affluents, embranchements et issues sont ou seront sous sa souveraineté ou son protectorat.

Art. 32. Chacune des autres Puissances signataires s'engage de même, pour le cas où elle exercerait dans l'avenir des droits de souveraineté ou de protectorat sur quelque partie des eaux du Niger, de ses affluents, embranchements et issues.

Art. 33. Les dispositions du présent Acte de navigation demeureront en vigueur en temps de guerre. En conséquence, la navigation de toutes les nations, neutres ou belligérantes, sera libre en tout temps pour les usages du commerce sur le Niger, ses embranchements et affluents, ses embouchures et issues, ainsi que sur la mer territoriale faisant face aux embouchures et issues de ce fleuve.

Le trafic demeurera également libre, malgré l'état de guerre, sur les routes, chemins de fer et canaux mentionnés dans l'article 29.

Il ne sera apporté d'exception à ce principe qu'en ce qui concerne le transport des objets destinés à un belligérant et considérés, en vertu du droit des gens, comme articles de contrebande de guerre.

CHAPITRE VI.

Déclaration relative aux conditions essentielles à remplir pour que des occupations nouvelles sur les côtes du Continent Africain soient considérées comme effectives.

Art. 34. La Puissance qui dorénavant prendra possession d'un territoire sur les côtes du Continent Africain situé en dehors de ses possessions actuelles, ou qui, n'en ayant pas eu jusque-là, viendrait à en acquérir, et de même, la Puissance qui y assumera un protectorat, accompagnera l'acte respectif d'une notification adressée aux autres Puissances signataires du présent Acte, afin de les mettre à même de faire valoir, s'il y a lieu, leurs réclamations.

Art. 35. Les Puissances signataires du présent Acte reconnaissent l'obligation d'assurer, dans les territoires occupés par elles, sur les côtes du Continent Africain, l'existence d'une autorité suffisante pour faire respecter les droits acquis et, le cas échéant, la liberté du commerce et du transit dans les conditions où elle serait stipulée.

CHAPITRE VII.

Dispositions générales.

Art. 36. Les Puissances signataires du présent Acte général se réservent d'y introduire ultérieurement et d'un commun accord les modifications ou améliorations dont l'utilité serait démontrée par l'expérience.

Art. 37. Les Puissances qui n'auront pas signé le présent Acte général pourront adhérer à ses dispositions par un acte séparé.

L'adhésion de chaque Puissance est notifiée, par la voie diplomatique, au Gouvernement de l'Empire d'Allemagne, et par celui-ci à tous les États signataires ou adhérents.

Elle emporte de plein droit l'acceptation de toutes les obligations et l'admission à tous les avantages stipulés par le présent Acte général.

Art. 38. Le présent Acte général sera ratifié dans un délai qui sera le plus court possible et qui, en aucun cas, ne pourra excéder un an.

Il entrera en vigueur pour chaque Puissance à partir de la date où elle l'aura ratifié.

En attendant, les Puissances signataires du présent Acte général s'obligent à n'adopter aucune mesure qui serait contraire aux dispositions dudit Acte.

Chacune Puissance adressera sa ratification au Gouvernement de l'Empire d'Allemagne, par les soins de qui il en sera donné avis à toutes les autres Puissances signataires du présent Acte général.

Les ratifications de toutes les Puissances resteront déposées dans les archives du Gouvernement de l'Empire d'Allemagne. Lorsque toutes les ratifications auront été produites, il sera dressé acte du dépôt dans un protocole qui sera signé par les Représentants de toutes les Puissances ayant pris part à la Conférence de Berlin et dont une copie certifiée sera adressée à toutes ces Puissances.

En foi de quoi, les Plénipotentiaires respectifs ont signé le présent Acte général et y ont apposé leur cachet.

Fait à Berlin, le vingt-sixième jour du mois de février mil huit cent quatre-vingt-cinq.

No. 128.—*GENERAL ACT of the Conference of Berlin, relative to the Development of Trade and Civilization in Africa; the free Navigation of the Rivers Congo, Niger, &c.; the Suppression of the Slave Trade by Sea and Land; the occupation of Territory on the African Coasts, &c. Signed at Berlin, 26th February, 1885.**

(Translation.)

In the Name of Almighty God.

Preamble.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the King of Denmark; His Majesty the King of Spain; the President of the United States of America; the President of the French Republic; His Majesty the King of Italy; His Majesty the King of the Netherlands, Grand Duke of Luxemburg, &c.; His Majesty the King of Portugal and the Algarves, &c.; His Majesty the Emperor of all the Russias; His Majesty the King of Sweden and Norway, &c.; and His Majesty the Emperor of the Ottomans, wishing, in a spirit of good and mutual accord, to regulate the conditions most favourable to the development of trade and civilization in certain regions of Africa, and to assure to all nations the advantages of free navigation on the two chief rivers of Africa flowing into the Atlantic Ocean; being desirous, on the other hand, to obviate the misunderstanding and disputes which might in future arise from new acts of occupation ("prises de possession") on the coast of Africa; and concerned, at the same time, as to the means of furthering the moral and material well-being of the native populations, have resolved, on the invitation addressed to them by the Imperial Government of Germany, in agreement with the Government of the French Republic, to meet for those purposes in Conference at Berlin, and have appointed as their Plenipotentiaries, to wit:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, Sir Edward Baldwin Malet, her Ambassador Extraordinary and Plenipotentiary at the Court of His Majesty the German Emperor, King of Prussia;

His Majesty the German Emperor, King of Prussia, Otho, Prince von Bismarck, his President of the Prussian Council of Ministers, Chancellor of the Empire; Paul, Count von Hatzfeldt, his Minister of State and Secretary of State for Foreign Affairs; Auguste Busch, his Acting Privy Councillor of Legation and Under-Secretary of State for Foreign Affairs; and Henri von Kusserow, Privy Councillor of Legation in the Department for Foreign Affairs;

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* For Protocols of Conferences, see S.P., vol. lxxv, p. 1178, and vol. lxxvi, p. 1021. See also Brussels Act of 2nd July, 1890, p. 488, and Declaration of same date respecting Import Duties, p. 517.

His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary, Emeric, Count Széchényi de Sarvari Felsö-Vidék, Chamberlain and Acting Privy Councillor, his Ambassado Extraordinary and Plenipotentiary at the Court of His Majesty the German Emperor, King of Prussia;

His Majesty the King of the Belgians, Gabriel Auguste Count van der Straten-Ponthoz, Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the German Emperor, King of Prussia; and Auguste Baron Lambermont, Minister of State, Envoy Extraordinary and Minister Plenipotentiary;

His Majesty the King of Denmark, Émile de Vind, Chamberlain, his Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the German Emperor, King of Prussia;

His Majesty the King of Spain, Don Francisco Merry y Colom, Count Benomar, his Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the German Emperor, King of Prussia;

The President of the United States of America, John A. Kasson, Envoy Extraordinary and Minister Plenipotentiary of the United States of America at the Court of His Majesty the German Emperor, King of Prussia, and Henry S. Sandford, ex-Minister;

The President of the French Republic, Alphonse, Baron de Courcel, Ambassador Extraordinary and Plenipotentiary of France at the Court of His Majesty the German Emperor King of Prussia;

His Majesty the King of Italy, Edward, Count de Launay, his Ambassador Extraordinary and Plenipotentiary at the Court of His Majesty the German Emperor, King of Prussia;

His Majesty the King of the Netherlands, Grand Duke of Luxemburg, Frederick Philippe, Jonkheer van der Hoeven his Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the German Emperor, King of Prussia;

His Majesty the King of Portugal and the Algarves, &c., Da Serra Gomes, Marquis de Penafiel, Peer of the Realm, his Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the German Emperor, King of Prussia, and Antoine de Serpa Pimentel, Councillor of State and Peer of the Realm;

His Majesty the Emperor of All the Russias, Pierre, Count Kapnist, Privy Councillor, his Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the King of the Netherlands;

His Majesty the King of Sweden and Norway, &c., Gillis, Baron Bilt, Lieutenant-General, his Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the German Emperor, King of Prussia;

His Majesty the Emperor of the Ottomans, Méhémed Saïd Pasha, Vizir and High Dignitary, his Envoy Extraordinary and Plenipotentiary at the Court of His Majesty the German Emperor, King of Prussia;

Who, being provided with full powers, which have been found in good and due form, have successively discussed and adopted:—

Freedom of Trade in Basin of the Congo, &c.

1. A Declaration relative to freedom of trade in the basin of the Congo, its embouchures and circumjacent regions, with other provisions connected therewith. (See p. 471.)

Slave Trade by Sea or Land.

2. A Declaration relative to the slave trade, and the operations by sea or land which furnish slaves to that trade. (See p. 474.)

Neutrality of Territories comprised in the Conventional Basin of the Congo.

3. A Declaration relative to the neutrality of the territories comprised in the Conventional basin of the Congo. (See p. 474.)

Navigation of the Congo, &c.

4. An Act of Navigation for the Congo, which, while having regard to local circumstances, extends to this river, its affluents, and the waters in its system ("eaux qui leur sont assimilées"), the general principles enunciated in Articles CVIII to CXVI of the Final Act of the Congress of Vienna,[*] and intended to regulate, as between the Signatory Powers of that Act, the free navigation of the waterways separating or traversing several States—these said principles having since then been applied by agreement to certain rivers of Europe and America, but especially to the Danube with the modifications stipulated by the Treaties of Paris (1856)[†] of Berlin (1878)[‡] and of London (1871 and 1883).[§] (See p. 475.)

Navigation of the Niger.

5. An Act of Navigation for the Niger, which, while likewise having regard to local circumstances, extends to this river and its affluents the same principles as set forth in Articles CVIII to CXVI, of the Final Act of the Congress of Vienna. (See p. 481.)

Future Occupations on the Coast of Africa.

6. A Declaration introducing into international relations certain uniform rules with reference to future occupations on the coast of the African Continent. (See p. 484.)

And deeming it expedient that all these several documents should be combined in one single instrument, they (the Signatory Powers) have collected them into one General Act, composed of the following Articles :—

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[*] See "Map of Europe by Treaty," vol. i, p. 75.
[†] " " " " vol. ii, p. 1275.
[‡] " " " " vol. iv, p. 2720.
[§] " " " " vol. iii, p. 1919 and vol. iv, p. 3104.

Chapter I.—Declaration relative to Freedom of Trade in the Basin of the Congo, its Mouths and circumjacent Regions, with other Provisions connected therewith.

Freedom of Trade to all Nations.

Art. I.—The trade of all nations shall enjoy complete freedom :—

Basin of the Congo Defined.

1. In all the regions forming the basin of the Congo and its outlets. This basin is bounded by the watersheds (or mountain ridges) of the adjacent basins, namely, in particular, those of the Niari, the Ogowé, the Schari, and the Nile on the north ; by the eastern watershed line of the affluents of Lake Tanganyika on the east ; and by the watersheds of the basins of the Zambesi and the Logé on the south. It therefore comprises all the regions watered by the Congo and its affluents, including Lake Tanganyika, with its eastern tributaries.

*Maritime Zone Defined.**

2. In the maritime zone extending along the Atlantic Ocean from the parallel situated in 2° 30′ of South Latitude to the mouth of the Logé.

Northern Boundary.

The northern boundary will follow the parallel situated in 2° 30′ from the coast to the point where it meets the geographical basin of the Congo, avoiding the basin of the Ogowé, to which the provisions of the present Act do not apply.

Southern Boundary.

The southern boundary will follow the course of the Logé to its source, and thence pass eastwards till it joins the geographical basin of the Congo.

Eastern Boundary.

3. In the zone stretching eastwards from the Congo Basin as above defined, to the Indian Ocean from 5 degrees of North Latitude to the mouth of the Zambesi in the south, from which point the line of demarcation will ascend the Zambesi to 5 miles above its confluence with the Shiré, and then follow the watershed between the affluents of Lake Nyassa and those of the Zambesi, till at last it reaches the watershed between the waters of the Zambesi and the Congo.

Free Trade Principles applied to Signatory Powers, and to such Independent States as may approve the same.

It is expressly recognized that in extending the principle of free trade to this eastern zone, the Conference Powers only undertake engagements for themselves, and that in the territories belonging to an independent Sovereign State this principle shall only be applicable in so far as it is approved by such State. But the Powers agree to use their good offices with the Governments established on the African shore of the Indian Ocean for the purpose of obtaining such approval, and in any case of securing the most favourable conditions to the transit (traffic) of all nations. (See also Art. XV p. 477.)

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* See also Brussels Act of 2nd July, 1890, Art. XXI, p. 499 (Slave Trade).

Free Access of all Flags to Coast-line.

Art. II.—All flags, without distinction of nationality, shall have free access to the whole of the coast-line of the territories above enumerated.

Navigation of Rivers; of Congo and its Affluents, and Lakes, Ports, and Canals.

To the rivers there running into the sea to all the waters of the Congo and its affluents, including the lakes, and to all the ports situate on the banks of these waters, as well as to all canals which may in future be constructed with intent to unite, the watercourses or lakes within the entire area of the territories described in Article I.

Transport, Coasting Trade, and Boat Traffic.

Those trading under such flags may engage in all sorts of transport, and carry on the coasting trade by sea and river, as well as boat traffic, on the same footing as if they were subjects.

No Taxes to be levied on Wares Imported (with slight exceptions).

Art. III.—Wares, of whatever origin, imported into these regions, under whatsoever flag, by sea or river, or overland, shall be subject to no other taxes than such as may be levied as fair compensation for expenditure in the interests of trade, and which for this reason must be equally borne by the subjects themselves and by foreigners of all nationalities.

Differential Duties forbidden.

All differential dues on vessels, as well as on merchandize are forbidden.

No Import or Transit Duties to be levied on Merchandize.

Art. IV.—Merchandize imported into these regions shall remain free from import and transit dues.

Question to be reconsidered after 20 years.

The Powers reserve to themselves to determine after the lapse of 20 years whether this freedom of import shall be retained or not.*

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* See also Brussels Act of 2nd July, 1890, p. 488, and Agreement between Great Britain, Germany, and Italy of 22nd December, 1890, p. 518.

No Monopolies or Favours to be granted.

Art. V.—No Power which exercises or shall exercise sovereign rights in the above-mentioned regions shall be allowed to grant therein a monopoly or favour of any kind in matters of trade.

Protection of Persons and Property, movable and immovable Possessions; Professions.

Foreigners, without distinction, shall enjoy therein with regard to the protection of their persons and effects, the acquisition and transmission of their movable and real property and with regard to the exercise of their professions, the same treatment and the same rights as nationals.

Art. VI.—*Provisions relative to Protection of the Natives, of Missionaries and Travellers, as well as relative to Religious Liberty.*

Preservation and Improvement of Native Tribes; Slavery, and the Slave Trade.

All the Powers exercising sovereign rights or influence in the aforesaid territories bind themselves to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being, and to help in suppressing slavery, and especially the slave trade.

Religious and other Institutions. Civilization of Natives.

They shall, without distinction of creed or nation, protect and favour all religions, scientific, or charitable institutions, and undertakings created and organized for the above ends, or which aim at instructing the natives and bringing home to them the blessings of civilization.

Protection of Missionaries, Scientists, and Explorers.

Christian missionaries, scientists and explorers, with their followers, property, and collections, shall likewise be the objects of especial protection.

Religious Toleration.

Freedom of conscience and religious toleration are expressly guaranteed to the natives, no less than to subjects and to foreigners.

Public Worship.

The free and public exercise of all forms of Divine worship, and the right to build edifices for religious purposes, and to organize religious missions belonging to all creeds, shall not be limited or fettered in any way whatsoever.

Art. VII.—*Postal Régime.*

Postal Union.

The Convention of the Universal Postal Union, as revised at Paris the 1st June, 1378,* shall be applied to the Conventional basin of the Congo.

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* S.P., vol. lxix, p. 210. H.T., vol. xiv, p. 1007.

The Powers who therein do or shall exercise rights of sovereignty or Protectorate engage, as soon as circumstances permit them, to take the measures necessary for the carrying out of the preceding provision.

Art. VIII.—*Right of Surveillance vested in the International Navigation Commission of the Congo.*

Surveillance of International Navigation Commission of the Congo in territories where no Power shall exercise rights of Sovereignty or Protectorate.

In all parts of the territory had in view by the present Declaration, where no Power shall exercise rights of sovereignty or Protectorate, the International Navigation Commission of the Congo, instituted in virtue of Article XVII, shall be charged with supervising the application of the principles proclaimed and perpetuated ("consacrés") by this Declaration.

In all cases of difference arising relative to the application of the principles established by the present Declaration, the Governments concerned may agree to appeal to the good offices of the International Commission by submitting to it an examination of the facts which shall have occasioned these differences.

CHAP. II.—DECLARATION RELATIVE TO THE SLAVE TRADE.

Suppression of the Slave Trade by Land and Sea; and of Slave Markets.

Art. IX.—Seeing that trading in slaves is forbidden in conformity with the principles of international law as recognized by the Signatory Powers, and seeing also that the operations, which, by sea or land, furnish slaves to trade, ought likewise to be regarded as forbidden, the Powers which do or shall exercise sovereign rights or influence in the territories forming the Conventional basin of the Congo declare that these territories may not serve as a market or means of transit for the trade in slaves, of whatever race they may be. Each of the Powers binds itself to employ all the means at its disposal for putting an end to this trade and for punishing those who engage in it.

CHAP. III.—DECLARATION RELATIVE TO THE NEUTRALITY OF THE TERRITORIES COMPRISED IN THE CONVENTIONAL BASIN OF THE CONGO.

Neutrality of Territories and Territorial Waters.

Art. X.—In order to give a new guarantee of security to trade and industry, and to encourage, by the maintenance of peace, the development of civilization in the countries mentioned in Article I, and placed under the free trade system, the High Signatory Parties to the present Act, and those who shall hereafter adopt it, bind themselves to respect the neutrality of the territories, or portions of territories, belonging to the said countries, comprising therein the territorial waters, so long as the Powers which exercise or shall exercise the rights of sovereignty or Protectorate over those territories, using their option of proclaiming themselves neutral, shall fulfil the duties which neutrality requires.

Hostilities not to extend to Neutralized States.

Art. XI.—In case a Power exercising rights of sovereignty or Protectorate in the countries mentioned in Article I, and placed under the free trade system, shall be involved in a war then the High Signatory Parties to the present Act, and those who shall hereafter adopt it, bind themselves to lend their good offices in order that the territories belonging to this Power and comprised in the Conventional tree trade zone shall, by the common consent of this Power and of the other belligerent or belligerents, be placed during the war under the rule of neutrality, and considered as belonging to a non-belligerent State, the belligerents thenceforth abstaining from extending hostilities to the territories thus neutralized, and from using them as a base for warlike operations.

Serious Disagreements between Signatory Powers to be referred to Mediation.

Art. XII.—In case a serious disagreement originating on the subject of, or in the limits of, the territories mentioned in Article I, and placed under the free trade system, shall arise between any Signatory Powers of the present Act, or the Powers which may become parties to it, these Powers bind themselves, before appealing to arms, to have recourse to the mediation of one or more of the friendly Powers.

Or to Arbitration.

In a similar case the same Powers reserve to themselves the option of having recourse to arbitration.

Chap. IV.—Act of Navigation for the Congo.

The Congo and its Branches open to the Merchant Vessels of all Nations.

Art. XIII.—The navigation of the Congo, without excepting any of its branches or outlets, is, and shall remain, free for the merchant ships of all nations equally, whether carrying cargo or ballast, for the transport of goods or passengers. It shall be regulated by the provisions of this Act of Navigation, and by the Rules to be made in pursuance thereof.

Equality of Treatment to all Nations; Coasting Trade; Boat Traffic.

In the exercise of this navigation the subjects and flags of all nations shall in all respects be treated on a footing of perfect equality, not only for the direct navigation from the open sea to the inland ports of the Congo and *vice versâ*, but also for the great and small coasting trade, and for boat traffic on the course of the river.

Privileges; Riverain and non-Riverain States; Companies, Corporations, and Private Persons.

Consequently, on all the course and mouths of the Congo there will be no distinction made between the subjects of Riverain States and those of non-Riverain States, and no exclusive privilege of navigation will be conceded to Companies, Corporations, or private persons whatsoever.

International Law.

These provisions are recognized by the Signatory Powers as becoming henceforth a part of international law.

Congo. No Restrictions or Obligations to be imposed.

Art. XIV.—The navigation of the Congo shall not be subject to any restriction or obligation which is not expressly stipulated by the present Act.

No Landing or other Dues.

It shall not be exposed to any landing dues, to any station or depôt tax, or to any charge for breaking bulk, or for compulsory entry into port.

No Transit Dues on Ships or Goods.

In all the extent of the Congo the ships and goods in process of transit on the river shall be submitted to no transit dues, whatever their starting-place or destination.

No Maritime or River Tolls to be levied (with certain exceptions).

There shall be levied no maritime or river toll based on the mere fact of navigation, nor any tax on goods aboard of ships. There shall only be levied taxes or duties having the character of an equivalent for services rendered to navigation itself, to wit:—

Harbour Dues on Wharves, &c.

1. Harbour dues on certain local establishments, such as wharves, warehouses, &c., if actually used.

The Tariff of such dues shall be framed according to the cost of constructing and maintaining the said local establishments; and it will be applied without regard to whence vessels come or what they are loaded with.

Pilot Dues.

2. Pilot dues for those stretches of the river where it may be necessary to establish properly-qualified pilots.

The Tariff of these dues shall be fixed and calculated in proportion to the service rendered.

Lighthouse and such like Dues.

3. Charges raised to cover technical and administrative expenses incurred in the general interest of navigation, including lighthouse, beacon, and buoy duties.

The last-mentioned dues shall be based on the tonnage of vessels as shown by the ship's papers, and in accordance with the Rules adopted on the Lower Danube.

No Differential Duties to be levied.

The Tariffs by which the various dues and taxes enumerated in the three preceding paragraphs shall be levied, shall not involve any differential treatment and shall be officially published at each port.

Power reserved of revising Tariffs after 5 years.

The Powers reserve to themselves to consider, after the lapse of 5 years,* whether it may be necessary to revise, by common accord, the above-mentioned Tariffs.

Congo. Affluents of the Congo.

Art. XV.—The affluents of the Congo shall in all respects be subject to the same rules as the river of which they are tributaries.

Streams, Lakes, and Canals.

And the same rules shall apply to the streams and rivers as well as the lakes and canals in the territories defined in paragraphs 2 and 3 of Article I (p. 471).

At the same time the powers of the International Commission of the Congo will not extend to the said rivers, streams, lakes, and canals, unless with the assent of the States under whose Sovereignty they are placed. It is well understood, also, that with regard to the territories mentioned in paragraph 3 of Article I (p. 471), the consent of the Sovereign States owning these territories is reserved.

Roads, Railways, or lateral Canals open to all Nations.

Art. XVI.—The roads, railways, or lateral canals which may be constructed with the special object of obviating the innavigability or correcting the imperfection of the river route on certain sections of the course of the Congo, its affluents, and other water-ways placed under a similar system, as laid down in Article XV, shall be considered in their quality of means of communication as dependencies of this river, and as equally open to the traffic of all nations.

Tolls.

And, as on the river itself, so there shall be collected on these roads, railways, and canals only tolls calculated on the cost of construction, maintenance, and management, and on the profits due to the promoters.

As regards the Tariff of these tolls, strangers and the natives of the respective territories shall be treated on a footing of perfect equality.

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* See Tariff, 22nd December, 1890, p. 518.

International Navigation Commission of the Congo.

Art. XVII.—There is instituted an International Commission, charged with the execution of the provisions of the present Act of Navigation.

Each Power to be Represented by One Delegate with One Vote only.

The Signatory Powers of this Act, as well as those who may subsequently adhere to it, may always be represented on the said Commission, each by one Delegate. But no Delegate shall have more than one vote at his disposal even in the case of his representing several Governments.

Payment of Delegates, Agents and Employés.

This Delegate will be directly paid by his Government. As for the various agents and employés of the International Commission, their remuneration shall be charged to the amount of the dues collected in conformity with paragraphs 2 and 3 of Article XIV.

The particulars of the said remuneration, as well as the number, grade, and powers of the agents and employés, shall be entered in the Returns to be sent yearly to the Governments represented on the International Commission.

Congo. Inviolability of Members and Agents their Offices and Archives.

Art. XVIII.—The members of the International Commission, as well as its appointed agents, are invested with the privilege of inviolability in the exercise of their functions. The same guarantee shall apply to the offices and archives of the Commission.

Congo. Constitution of the Commission.

Art. XIX.—The International Commission for the Navigation of the Congo shall be constituted as soon as five of the Signatory Powers of the present General Act shall have appointed their Delegates.

Nomination of Delegates to be notified to German Government.

And pending the Constitution of the Commission the nomination of these Delegates shall be notified to the Imperial Government of Germany, which will see to it that the necessary steps are taken to summon the meeting of the Commission.

Navigation, River Police, Pilot, and Quarantine Rules.

The Commission will at once draw up navigation, river police, pilot, and quarantine Rules.

These Rules as well as the Tariffs to be framed by the Commission, shall, before coming into force, be submitted for approval to the Powers represented on the Commission. The Powers interested will have to communicate their views with as little delay as possible.

Infringement of Rules.

Any infringements of these Rules will be checked by the agents of the International Commission wherever it exercises direct authority, and elsewhere by the Riverain Power.

In the case of an abuse of power, or of an act of injustice, on the part of any agent or employé of the International Commission, the individual who considers himself to be aggrieved in his person or rights may apply to the Consular Agent of his country. The latter will examine his complaint, and if he finds it *primâ facie* reasonable, he will then be entitled to bring it before the Commission. At his instance then, the Commission, represented by at least three of its members, shall, in conjunction with him, inquire into the conduct of its agent or employé. Should the Consular Agent look upon the decision of the Commission as raising questions of law (" objections de droit "), he will report on the subject to his Government, which may then have recourse to the Powers represented on the Commission, and invite them to agree as to the instructions to be given to the Commission.

Art. XX.—The International Commission of the Congo, charged in terms of Article XVII with the execution of the present Act of Navigation, shall in particular have power—

Works necessary to assure Navigability of the Congo.

1. To decide what works are necessary to assure the navigability of the Congo in accordance with the needs of international trade.

On those sections of the river where no Power exercises sovereign rights, the International Commission will itself take the necessary measures for assuring the navigability of the river.

On those sections of the river held by a Sovereign Power the International Commission will concert its action (" s'entendra ") with the riparian authorities.

Pilot Tariff and Navigation Dues.

2. To fix the pilot tariff and that of the general navigation dues as provided for by paragraphs 2 and 3 of Article XIV.

The Tariffs mentioned in the first paragraph of Article XIV shall be framed by the territorial authorities within the limits prescribed in the said Article.

The levying of the various dues shall be seen to by the international or territorial authorities on whose behalf they are established.

Administration of Revenue.

3. To administer the revenue arising from the application of the preceding paragraph (2).

Quarantine Establishment.

4. To superintend the quarantine establishment created in virtue of Article XXIV.

Appointment of Officials and Employés.

5. To appoint officials for the general service of navigation, and also its own proper employés.

Sub-Inspectors.

It will be for the territorial authorities to appoint Sub-Inspectors on sections of the river occupied by a Power, and for the International Commission to do so on the other sections.

The Riverain Power will notify to the International Commission the appointment of Sub-Inspectors, and this Power will undertake the payment of their salaries.

In the exercise of its functions, as above defined and limited the International Commission will be independent of the territorial authorities.

Congo. Employment of War Vessels by Navigation Commission.

Art. XXI.—In the accomplishment of its task the International Commission may, if need be, have recourse to the war vessels of the Signatory Powers of this Act, and of those who may in future accede to it, under reserve, however, of the instructions which may be given to the Commanders of these vessels by their respective Governments.

Congo. War Vessels Exempt from Navigation Dues.

Art. XXII.—The war vessels of the Signatory Powers of this Act that may enter the Congo are exempt from payment of the navigation dues provided for in paragraph 3 of Article XIV.

Otherwise liable to Payment of Pilot and Harbour Dues.

But unless their intervention has been called for by the International Commission or its agents, in terms of the preceding Article, they shall be liable to the payment of the pilot or harbour dues which may eventually be established.

Congo. Loans for Technical and Administrative Expenses.

Art. XXIII.—With the view of providing for the technical and administrative expenses which it may incur, the International Commission created by Article XVII may, in its own name, negotiate loans to be exclusively guaranteed by the revenues raised by the said Commission.

The decisions of the Commission dealing with the conclusion of a loan must be come to by a majority of two-thirds. It is understood that the Governments represented on the Commission shall not in any case be held as assuming any guarantee, or as contracting any engagement or joint liability "(solidarité") with respect to the said loans unless under special Conventions concluded by them to this effect.

The revenue yielded by the dues specified in paragraph 3 of Article XIV shall bear, as a first charge, the payment of the interest and sinking fund of the said loans, according to agreement with the lenders.

Quarantine Establishment at Mouth of the Congo.

Art. XXIV.—At the mouth of the Congo there shall be founded, either on the initiative of the Riverain Powers, or by the intervention of the International Commission, a quarantine establishment for the control of vessels passing out of as well as into the river.

Sanitary Control over Vessels.

Later on the Powers will decide whether and on what conditions a sanitary control shall be exercised over vessels engaged in the navigation of the river itself.

Congo. Freedom of Navigation of the Congo and Territorial Waters during War.

Art. XXV.—The provisions of the present Act of Navigation shall remain in force in time of war. Consequently all nations, whether neutral or belligerent, shall be always free, for the purposes of trade, to navigate the Congo, its branches, affluents, and mouths, as well as the territorial waters fronting the embouchure of the river.

Roads, Railways, Lakes, and Canals included.

Traffic will similarly remain free, despite a state of war, on the roads, railways, lakes, and canals mentioned in Articles XV and XVI.

Transport of Contraband of War excepted.

There will be no exception to this principle, except in so far as concerns the transport of articles intended for a belligerent, and in virtue of the law of nations regarded as contraband of war.

Neutrality of Works and Establishments.

All the works and establishments created in pursuance of the present Act, especially the tax-collecting offices and their treasuries, as well as the permanent service staff of these establishments, shall enjoy the benefits of neutrality ("placés sous le régime de la neutralité"), and shall, therefore, be respected and protected by belligerents.

CHAP. V.—ACT OF NAVIGATION FOR THE NIGER.

The Niger and its Branches open to the Merchant Vessels of all Nations.

Art. XXVI.*—The navigation of the Niger, without excepting any of its branches and outlets, is and shall remain entirely free for the merchant ships of all nations equally, whether with cargo or in ballast, for the transportation of goods and passengers. It shall be regulated by the provision of this Act of Navigation, and by the Rules to be made in pursuance of this Act.

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* See Agreement, Great Britain and Germany, 15th November, 1893, Art. VI, p. 916.

Niger. Equality of Treatment to all Nations; Coasting Trade; Boat Traffic.

In the exercise of this navigation the subjects and flags of all nations shall be treated, in all circumstances, on a footing of perfect equality, not only for the direct navigation from the open sea to the inland ports of the Niger, and *vice versâ*, but for the great and small coasting trade, and for boat trade on the course of the river.

Privileges: Riverain and non-Riverain States; Companies, Corporations, and Private Persons.

Consequently, on all the course and mouths of the Niger there will be no distinction made between the subjects of the Riverain States and those of non-Riverain States; and no exclusive privilege of navigation will be conceded to companies, corporations, or private persons.

International Law.

These provisions are recognised by the Signatory Powers as forming henceforth a part of international law.

No Restrictions or Obligations to be imposed on Navigation.

Art. XXVII.[*]—The navigation of the Niger shall not be subject to any restriction or obligation based merely on the fact of navigation.

No Landing or other Dues to be imposed.

It shall not be exposed to any obligation in regard to landing-station or depôt, or for breaking bulk, or for compulsory entry into port.

No Transit Dues on Ships or Goods to be levied.

In all the extent of the Niger the ships and goods in process of transit on the river shall be submitted to no transit dues, whatever their starting place or destination.

No Maritime or River Tolls to be levied (with certain exceptions).

No maritime or river toll shall be levied or based on the sole fact of navigation, nor any tax on goods on board of ships. There shall only be collected taxes or duties which shall be an equivalent for services rendered to navigation itself.

No Differential Duties to be levied.

The Tariff of these taxes or duties shall not warrant any differential treatment.

Affluents of the Niger.

Art. XXVIII.[*]—The affluents of the Niger shall be in all respects subject to the same rules as the river of which they are tributaries.

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[*] See Agreement, Great Britain and Germany, 15th November, 1893, Art. VI, p. 915.

Niger. Roads, Railways, or lateral Canals open to all Nations.

Art. XXIX.*—The roads, railways, or lateral canals which may be constructed with the special object of obviating the innavigability or correcting the imperfections of the river route on certain sections of the Niger, its affluents, branches, and outlets, shall be considered, in their quality of means of communication, as dependencies of this river, and as equally open to the traffic of all nations.

Tolls.

And, as on the river itself, so there shall be collected on these roads, railways, and canals, only tolls calculated on the cost of construction, maintenance, and management, and on the profits due to the promoters.

As regards the Tariff of these tolls, strangers and the natives of the respective territories shall be treated on a footing of perfect equality.

British Engagements. Waters of the Niger and its Affluents, &c., under British Sovereignty or Protection, to be subject to the principles above described.

Art. XXX.*—Great Britain undertakes to apply the principles of freedom of navigation enunciated in Articles XXVI, XXVII, XXVIII, and XXIX on so much of the waters of the Niger, its affluents, branches, and outlets, as are or may be under her sovereignty or protection.

Rules of Navigation to be established.

The rules which she may establish for the safety and control of navigation shall be drawn up in a way to facilitate, as far as possible, the circulation of merchant ships.

Great Britain not restricted from making any Rules not contrary to above Engagements.

It is understood that nothing in these obligations shall be interpreted as hindering Great Britain from making any Rules of Navigation whatever which shall not be contrary to the spirit of these engagements.

Foreign Merchants and all Trading Nationalities to be protected the same as British Subjects.

Great Britain undertakes to protect foreign merchants and all the trading nationalities on all those portions of the Niger which are or may be under her sovereignty or protection as if they were her own subjects: provided always that such merchants conform to the rules which are or shall be made in virtue of the foregoing.

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* See Agreement, Great Britain and Germany, 15th November, 1893, Art. VI, p. 915.

Niger. *French Engagements, with regard to Waters of the River, &c., under her Sovereignty or Protection.*

Art. XXXI.—France accepts, under the same reservations, and in identical terms, the obligations undertaken in the preceding articles in respect of so much of the waters of the Niger, its affluents, branches, and outlets, as are or may be under her sovereignty or protection.

Engagements of the other Signatory Powers.

Art. XXXII.—Each of the other Signatory Powers binds itself in the same way in case it should ever exercise in the future rights of sovereignty or protection over any portion of the waters of the Niger, branches, or outlets.

Freedom of Navigation of the Niger and Territorial Waters during War.

Art. XXXIII.*—The arrangements of the present Act of Navigation will remain in force in time of war. Consequently, the navigation of all neutral or belligerent nations will be in all time free for the usages of commerce on the Niger, its branches, its affluents, its mouths, and outlets, as well as on the territorial waters opposite the mouths and outlets of that river.

Roads, Railways, and Canals included.

The traffic will remain equally free in spite of a state of war on the roads, railways, and canals mentioned in Article XXIX.

Transport of Contraband of War excepted.

There will be an exception to this principle only in that which relates to the transport of articles destined for a belligerent, and considered, in virtue of the law of nations, as articles contraband of war.

CHAP. VI.—DECLARATION RELATIVE TO THE ESSENTIAL CONDITIONS TO BE OBSERVED IN ORDER THAT NEW OCCUPATIONS ON THE COASTS OF THE AFRICAN CONTINENT MAY BE HELD TO BE EFFECTIVE.

Notifications of Acquisitions and Protectorates on Coasts of African Continent.

Art. XXXIV.†—Any Power which henceforth takes possession of a tract of land on the coasts of the African Continent outside of its present possessions, or which, being hitherto without such possessions, shall acquire them, as well as the Power which assumes a Protectorate there, shall accompany the respective act with a notification thereof, addressed to the other Signatory Powers of the present Act, in order to enable them, if need be, to make good any claims of their own.

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* See Agreement, Great Britain and Germany, 15th November, 1893, Art. VI, p. 915.

† See Return, p. 487.

Establishment of authority in Territories occupied on Coasts. Protection of existing Rights. Freedom of Trade and Transit.

Art. XXXV.—The Signatory Powers of the present Act recognize the obligation to insure the establishment of authority in regions occupied by them on the coasts of the African Continent sufficient to protect existing rights, and, as the case may be, freedom of trade and of transit under the conditions agreed upon.

CHAP. VII.—GENERAL DISPOSITIONS.

Reservation as to Modifications.

Art. XXXVI.—The Signatory Powers of the present General Act reserve to themselves to introduce into it subsequently, and by common accord, such modifications and improvements as experience may show to be expedient.[*]

Liberty of other Powers to adhere to Act.

Art. XXXVII.—The Powers who have not signed the present General Act shall be free to adhere to its provisions by a separate instrument.[†]

Adhesions to be notified to all the Powers.

The adhesion of each Power shall be notified in diplomatic form to the Government of the German Empire, and by it in turn to all the other Signatory or adhering Powers.

Acceptance of all Obligations and Admission to all Advantages.

Such adhesion shall carry with it full acceptance of all the obligations, as well as admission to all the advantages, stipulated for by the present General Act.

General Act to be Ratified.

Art. XXXVIII.—The present General Act shall be ratified with as little delay as possible, the same in no case to exceed a year.[‡]

It will come into force for each Power from the date of its ratification by that Power.

Meanwhile, the Signatory Powers of the present General Act bind themselves not to take any steps contrary to its provisions.

Each Power will address its ratification to the Government of the German Empire, by which notice of the fact will be given to all the other Signatory Powers of the present Act.

Where Ratifications are to be deposited.

The ratifications of all the Powers will be deposited in the archives of the Government of the German Empire. When all the ratifications shall have been sent in, there will be drawn up a Deposit Act, in the

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[*] Zanzibar acceded, with a reservation, on the 8th November, 1886. (See Zanzibar, p. 314; but see Circular to Powers of 22nd June, 1892, p. 312.)

[†] See Brussels Act of 2nd July, 1890, p. 488.

[‡] Ratifications exchanged between all the Signatory Powers (except the United States), at Berlin, 19th April, 1886. See p. 486.

shape of a Protocol, to be signed by the Representatives of all the Powers which have taken part in the Conference of Berlin, and of which a certified copy will be sent to each of those Powers.

In testimony whereof the several Plenipotentiaries have signed the present General Act and have affixed thereto their seals.

Done at Berlin, the 26th day of February, 1885.

[Here follow the signatures.]

Annex 2

MEDITERRANEAN AGREEMENT OF GREAT BRITAIN, ITALY AND AUSTRIA-HUNGARY, 12 FEBRUARY 1887

Pribram, A. F.: *The Secret Treaties of Austria-Hungary, 1879-1914*,
Cambridge, 1920. Ed. Howard Fertig, New York, 1962,
Vol. I, pp. 94-97.

MEDITERRANEAN AGREEMENT OF GREAT BRITAIN, ITALY, AND AUSTRIA-HUNGARY IN 1887.

(a)

Italian Note to the British Government in regard to a Mediterranean Agreement. London, February 12, 1887.[1]

Dispaccio del conte Corti a Lord Salisbury.[2]

12. Februar 1887.[3]

Le soussigné ambassadeur extraordinaire et plénipotentiaire de S. M. le roi d'Italie a reçu de son gouvernement l'ordre de porter à la connaissance de S. E. le marquis de Salisbury, principal secrétaire d'état de S. M. britannique pour les affaires étrangères, ce qui suit:

Le gouvernement de S. M. le roi, animé du désir d'établir avec celui de S. M. la reine une entente sur diverses questions concernant leurs intérêts, est d'avis que ce but pourrait être atteint par l'adoption des bases suivantes:

I° On maintiendra autant que possible le statu quo dans la Mediterannée (!) ainsi que dans l'Adriatique, la mer Egée et la mer Noire. On aura par conséquent soin de surveiller et au besoin d'empêcher tout changement qui, sous la forme d'annexion, occupation, protectorat ou d'une toute autre manière quelconque, porterait atteinte à la situation actuelle au détriment des deux puissances.

II° Si le maintien du statu quo devient impossible, on fera en sorte qu'il ne se produise une modification quelconque qu'à la suite d'un accord préalable entre les deux puissances.

III° L'Italie est toute prête à appuyer l'oeuvre de la Grande-Bretagne en Egypte. La Grande-Bretagne à son tour est dis-

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[1] Copy: St. A., Polit. Arch., Sammlung der geheimen Vertragsurkunden, n. 20, Geheimakten, XIV, 4.

[2] There is added in Count Kálnoky's handwriting: "Abschrift mitgetheilt

MEDITERRANEAN AGREEMENT OF GREAT BRITAIN, ITALY, AND AUSTRIA-HUNGARY IN 1887.

(a)

Italian Note to the British Government in regard to a Mediterranean Agreement. London, February 12, 1887.

DESPATCH OF COUNT CORTI TO LORD SALISBURY.[1]

February 12, 1887.[2]

The undersigned, Ambassador Extraordinary and Plenipotentiary of His Majesty the King of Italy, has received from his Government instructions to bring to the attention of His Excellency the Marquess of Salisbury, Principal Secretary of State of Her Britannic Majesty for Foreign Affairs, the following:

The Government of His Majesty the King, animated by the desire of establishing with that of Her Majesty the Queen an understanding upon various questions concerning their interests, is of the opinion that this object could be attained by the adoption of the following bases:

I. The status quo in the Mediterranean as well as in the Adriatic, the Aegean Sea, and the Black Sea shall be maintained so far as possible. Care must be taken in consequence to watch, and, if need be, to prevent any change, which, under form of annexation, occupation, protectorate, or in any other manner whatsoever, would affect the present situation to the detriment of the two Powers.

II. If the maintenance of the status quo becomes impossible, they shall so act that no modification whatsoever shall occur except after a previous agreement between the two Powers.

III. Italy is entirely ready to support the work of Great Britain in Egypt. Great Britain in her turn is disposed, in case

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durch Graf Nigra. 19./2. 1887." ("Copy communicated through Count Nigra. February 19, 1887.")

[2] Added in Count Kálnoky's handwriting.

posée à appuyer, en cas d'envahissements de la part d'une tierce puissance, l'action de l'Italie sur tout autre point quelconque du littoral nord d'Afrique et notamment dans la Tripolitaine et la Cyrenaïque.

IV° En général et pour autant que les circonstances le comporteront, l'Italie et l'Angleterre se promettent appui mutuel dans la Méditerranée pour tout différend qui surgirait entre l'une d'elles et une tierce puissance.

En exprimant la confiance que ces bases recevront l'assentiment du gouvernement de S. M. la reine, le soussigné saisit etc.

(*b*)

British Note to the Italian Government in regard to a Mediterranean Agreement. London February 12, 1887.[4]

Antwort des Lord Salisbury an Grafen Corti.[5]

Secret.

The statement of Italian policy which is contained in your Exc.'s dispatch of the 12th of February[6] has been received by H. M.'s Government with great satisfaction, as it enables them to reciprocate cordially Count Robilant's friendly sentiments and to express their own desire to coöperate generally with the Government of Italy in matters of common interest to the two countries. The character of that cooperation must be decided by them, when the occasion for it arises, according to the circumstances of the case.

In the interest of peace and of the independence of the territories adjacent to the Mediterranean sea, Her Majesty's Govern-of encroachments on the part of a third Power, to support the action of Italy at every other point whatsoever of the North African coast districts, and especially in Tripolitania and Cyrenaica.

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[4] Copy: St. A., Polit. Arch., Sammlung der geheimen Vertragsurkunden, n. 20, Geheimakten, XIV, 5 a.

[5] Added to the manuscript by Count Kálnoky: "Abschrift, mitgetheilt durch Graf Nigra, 19./2. 1887." ("Copy, communicated through Count Nigra, February 19, 1887.")

[6] "12th of February" inserted by Count Kálnoky.

IV. In general, and to the extent that circumstances shall permit, Italy and England promise one another mutual support in the Mediterranean in every difference which may arise between one of them and a third Power.

In expressing the confidence that these bases will receive the assent of the Government of Her Britannic Majesty the Queen, the undersigned avails himself, etc.

ment wish to act in the closest concert and agreement with that of Italy. Both powers desire that the shores of the Euxine, the Aegean, the Adriatic and the northern coast of Africa shall remain in the same hands as now. If, owing to some calamitous events, it becomes impossible to maintain the absolute status quo, both powers desire that there shall be no extension of the domination of any other Great Power over any portion of those coasts. It will be the earnest desire of H. M.'s Government to give their best coöperation, as hereinbefore expressed, to the Government of Italy in maintaining these cardinal principles of policy.

Annex 3

DECLARATIONS EXCHANGED BETWEEN GREAT BRITAIN AND FRANCE WITH RESPECT TO TERRITORIES IN AFRICA, SIGNED AT LONDON, 5 AUGUST 1890

Declarations exchanged between the Government of Her Britannic Majesty
and the Government of the French Republic with respect to territories in Africa,
signed at London, 5 August 1890 (Article II only),
in *British and Foreign State Papers, 1891-1892*, Vol. LXXXIV,
London, H.M.S.O., 1898, pp. 851-852
and Rouard de Card, E.: *Traités de délimitation concernant l'Afrique française*,
Paris, Pedone/Gamber, 1910, pp. 89-91.

Annex (C).—*Declarations exchanged between the Government of Her Britannic Majesty and the Government of the French Republic with respect to Territories in Africa.—Signed at London, August 5, 1890.**

(Extract.)

The Undersigned, duly authorized by Her Britannic Majesty's Government, declares as follows:—

* * *

Art. II. The Government of Her Britannic Majesty recognizes the sphere of influence of France to the south of her Mediterranean possessions, up to a line from Say on the Niger, to Barruwa on Lake Tchad, drawn in such manner as to comprise in the sphere of action of the Niger Company all that fairly belongs to the Kingdom of Sokoto; the line to be determined by the Commissioners to be appointed.

The Government of Her Britannic Majesty engages to appoint immediately two Commis-

(Extrait.)

Le Soussigné, dûment autorisé par le Gouvernement de la République Française, fait la déclaration suivante :—

* * *

Art. II. Le Gouvernement de Sa Majesté Britannique reconnaît la zone d'influence de la France au sud de ses possessions Méditerranéennes, jusqu'à une ligne de Say sur le Niger, à Barruwa sur le Lac Tchad, tracée de façon à comprendre dans la zone d'action de la Compagnie du Niger tout ce qui appartient équitablement ("fairly") au Royaume de Sokoto; la ligne restant à déterminer par les Commissaires qui seront nommés.

Le Gouvernement de Sa Majesté Britannique s'engage à nommer immédiatement deux Comsioners to meet at Paris with two Commissioners appointed by the Government of the French Republic, in order to settle the details of the above-mentioned line. But it is expressly understood that even in case the labours of these Commissioners should not result in a complete agreement upon all details of the line, the agreement between the two Governments as to the general délimitation above set forth shall nevertheless remain binding.

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* For the full text of the Declarations of August 5, 1890, see Vol. LXXXII, page 89.

The Commissioners will also be intrusted with the task of determining the respective spheres of influence of the two countries in the region which extends to the west and to the south of the Middle and Upper Niger.

(Signed) SALISBURY.

London, August 5, 1890.

missaires, qui se réuniront à Paris avec deux Commissaires nommés par le Gouvernement de la République Française, dans le but de fixer les détails de la ligne ci-dessus indiquée. Mais il est expressément entendu que quand même les travaux des Commissaires n'aboutiraient pas à une entente complète sur tous les détails de la ligne, l'accord n'en subsisterait pas moins entre les deux Gouvernements sur le tracé général ci-dessus indiqué.

Les Commissaires auront également pour mission de déterminer les zones d'influence respectives des deux pays dans la région qui s'étend à l'ouest et au sud du Moyen- et du Haut-Niger.

(Signé) WADDINGTON.

Londres, le 5 Août, 1890.

DOCUMENT N° 4

Déclarations entre la France et la Grande-Bretagne, signées à Londres, le 5 *août* 1890.

I

DÉCLARATION DE M. WADDINGTON

Le soussigné, dûment autorisé par le gouverement de la République française, fait la déclaration suivante :

Conformément à la demande qui lui a été faite par le Gouvernement de Sa Majesté Britannique, le gouvernement de la République française consent à modifier l'arrangement du 10 mars 1862[1], en ce qui touche le sultan de Zanzibar. En conséquence, il s'engage à reconnaître le protectorat britannique sur les iles de Zanzibar et de Pemba, aussitôt qu'il lui aura été notifié.

Dans les territoires dont il s'agit, les missionnaires des deux pays jouiront d'une complète protection. La tolérance religieuse, la liberté pour tous les cultes et pour l'enseignement religieux sont garanties.

Il est bien entendu que l'établissement de ce protectorat ne peut pas porter atteinte aux droits et immunités dont jouissent les citoyens français dans les territoires dont il s'agit.

Londres, 5 août 1890.

Signé : WADDINGTON.

DÉCLARATION DE LORD SALISBURY

Le soussigné, dûment autorisé par le gouvernement de Sa Majesté Britannique, fait la déclaration suivante :

(Suit la même déclaration).

Londres, le 5 août 1890.

Signé : SALISBURY.

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[1] Arrangement conclu, le 10 mars 1862, entre la France et la Grande-Bretagne pour la garantie réciproque de l'indépendance des Sultans de Mascate et de Zanzibar.

DE CLERCQ, *Recueil des Traités de la France*, t. VIII, p. 397.

II

Le soussigné, dûment autorisé par le gouvernement de la République française, fait la déclaration suivante :

1. — Le gouvernement de Sa Majesté Britannique reconnaît le protectorat de la France sur l'île de Madagascar, avec ses conséquences, notamment en ce qui touche les exequaturs des consuls et agents britanniques qui devront être demandés par l'intermédiaire du Résident général français.

Dans l'ile de Madagascar, les missionnaires des deux pays jouiront d'une complète protection. La tolèrance religieuse, la liberté pour les cultes, et pour l'enseignement sont garanties.

Il est bien entendu que l'établissement de ce protectorat ne peut porter atteinte aux droits et immunités dont jouissent les nationaux anglais dans cette ile.

2. — Le gouvernement de Sa Majesté Britannique reconnaît la zone d'influence de la France au sud de ses possessions méditerranéennes, jusqu'à une ligne de Say sur le Niger à Barrua sur le lac Tchad, tracée de façon à comprendre dans la zone d'action de la Compagnie du Niger tout ce qui appartient équitablement au royaume de Sokoto ; la ligne restant à déterminer par les commissaires à nommer.

Le gouvernement de Sa Majesté Britannique s'engage à nommer immédiatement deux commissaires qui se réuniront à Paris avec deux commissaires nommés par le gouvernement de la République française, dans le but de fixer les détails de la ligne ci-dessus indiquée. Mais il est expressément entendu que quand même les travaux des commissaires n'aboutiraient pas à une entente complète sur tous les détails de la ligne, l'accord n'en subsisterait pas moins entre les deux gouvernements sur le tracé général ci-dessus indiqué.

Les commissaires auront également pour mission de déterminer les zones d'influence respectives des deux pays dans la région qui s'étend à l'ouest et au sud du Moyen et du Haut-Niger.

Londres, le 5 août 1890.

Signé : WADDINGTON.

DÉCLARATION DE LORD SALISBURY

Le soussigné, dûment autorisé par le gouvernement de Sa Majesté Britannique, fait la déclaration suivante: (Suit la même déclaration).

Londres, le 5 août 1890.

Signé : SALISBURY.

Annex 4

CONVENTION BETWEEN THE UNITED KINGDOM AND FRANCE FOR THE DELIMITATION OF THEIR RESPECTIVE POSSESSIONS TO THE WEST OF THE NIGER, AND OF THEIR RESPECTIVE POSSESSIONS AND SPHERES OF INFLUENCE TO THE EAST OF THAT RIVER, SIGNED AT PARIS, 14 JUNE 1898, TOGETHER WITH A DECLARATION COMPLETING THE SAME, SIGNED AT LONDON, 21 MARCH 1899

Treaty Series, No. 15, London. H.M.S.O., 1899, pp. 1-20
and Ministère des affaires étrangères, Documents diplomatiques,
Paris, Imprimerie nationale, 1920, Vol. XCVIII, pp. 1-8,
and Vol. XCIX, pp. 1-2.

CONVENTION BETWEEN THE UNITED KINGDOM AND FRANCE FOR THE DELIMITATION OF THEIR RESPECTIVE POSSESSIONS TO THE WEST OF THE NIGER, AND OF THEIR RESPECTIVE POSSESSIONS AND SPHERES OF INFLUENCE TO THE EAST OF THAT RIVER.

Signed at Paris, June 14, 1898.

[*Ratifications exchanged at Paris, June* 13, 1899.]

THE Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and the Government of the French Republic, having agreed, in a spirit of mutual good-will, to confirm the Protocol with its four Annexes prepared by their respective Delegates for the delimitation of the British Colonies of the Gold Coast, Lagos, and the other British possessions to the west of the Niger, and of the French possessions of the Ivory Coast, Sudan, and Dahomey, as well as for the delimitation of the British and French possessions and the spheres of influence of the two countries to the east of the Niger, the Undersigned, his Excellency the Right Honourable Sir Edmund Monson, Ambassador Extraordinary and

LE Gouvernement de Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, et le Gouvernement de la République Française, ayant résolu, dans un esprit de bonne entente mutuelle, de confirmer le Protocole avec ses quatre Annexes, préparé par leurs Délégués respectifs pour la délimitation des Colonies Britanniques de la Côte d'Or et de Lagos, et des autres possessions Britanniques à l'ouest du Niger, et des possessions Françaises de la Côte d'Ivoire, du Soudan, et du Dahomey, ainsi que pour la délimitation des possessions Britanniques et Françaises et des sphères d'influence des deux pays à l'est du Niger, les Soussignés, son Excellence le Très Honorable Sir Edmund Monson, Ambassadeur de Sa Majesté la

Plenipotentiary of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, accredited to the President of the French Republic ; and his Excellency M. Gabriel Hanotaux, Minister for Foreign Affairs of the French Republic ; duly authorized to this effect, confirm the Protocol with its Annexes, drawn up at Paris the 14th day of June, 1898, the text of which is as follows :—

Protocol.

The Undersigned, Martin Gosselin, Minister Plenipotentiary and Secretary of Her Britannic Majesty's Embassy at Paris ; William Everett, a Colonel in Her Britannic Majesty's land forces and an Assistant Adjutant-General in the Intelligence Division of the War Office ; René Lecomte, Minister Plenipotentiary, Assistant Sub-Director in the Department of Political Affairs in the Ministry for Foreign Affairs ; Louis Gustave Binger, Colonial Governor, unattached, Director of African Affairs at the Ministry of the Colonies ; delegated respectively by the Government of Her Britannic Majesty and by the Government of the French Republic in order to draw up, in conformity with the Declarations exchanged at London on the 5th August, 1890, and the 15th January, 1896, a draft of definitive delimitation between the British Colonies of the Gold Coast, Lagos, and the other British possessions to the west of the Niger, and the French possessions of the Ivory Coast, the Sudan, and Dahomey, and between the British and French

Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, près le Président de la République Française ; et son Excellence M. Gabriel Hanotaux, Ministre des Affaires Étrangères de la République Française, dûment autorisés à cet effet, confirment le Protocole avec ses Annexes, dressé à Paris le 14 Juin, 1898, et dont la teneur suit :—

Protocole.

Les Soussignés, Martin Gosselin, Ministre Plénipotentiaire, Premier Secrétaire de l'Ambassade de Sa Majesté Britannique à Paris ; William Everett, Colonel dans l'armée de terre de Sa Majesté Britannique, et Assistant Adjudant-Général au Bureau des Renseignements au Ministère de la Guerre ; René Lecomte, Ministre Plénipotentiaire, Sous-Directeur Adjoint à la Direction des Affaires Politiques du Ministère des Affaires Étrangères ; Louis Gustave Binger, Gouverneur des Colonies, hors cadres, Directeur des Affaires d'Afrique au Ministère des Colonies ; délégués respectivement par le Gouvernement de Sa Majesté Britannique et par le Gouvernement de la République Française à l'effet de préparer, en exécution des Déclarations échangées à Londres le 5 Août, 1890, et le 15 Janvier, 1896, un projet de délimitation définitive entre les Colonies Britanniques de la Côte d'Or et de Lagos, et les autres possessions Britanniques à l'ouest du Niger et les possessions Françaises de la Côte d'Ivoire, du Soudan, et du Da-

possessions and the spheres of influence of the two countries to the east of the Niger, have agreed to the following provisions, which they have resolved to submit for the approval of their respective Governments:—

ARTICLE I.

The frontier separating the British Colony of the Gold Coast from the French Colonies of the Ivory Coast and Sudan shall start from the northern terminal point of the frontier laid down in the Anglo-French Agreement of the 12th July, 1893, viz., the intersection of the thalweg of the Black Volta with the 9th degree of north latitude, and shall follow the thalweg of this river northward up to its intersection with the 11th degree of north latitude. From this point it shall follow this parallel of latitude eastward as far as the river shown on Map No. 1, annexed to the present Protocol, as passing immediately to the east of the villages of Zwaga (Soauga) and Zebilla (Sebilla), and it shall then follow the thalweg of the western branch of this river up stream to its intersection with the parallel of latitude passing through the village of Sapeliga. From this point the frontier shall follow the northern limits of the lands belonging to Sapeliga as far as the River Nuhau (Nouhau), and shall then follow the thalweg of this river up or down stream, as the case may be, to a point situated 2 miles (3,219 metres) eastward of the road which leads from Gambaga to Tenkrûgu (Tingourkou), viâ Bawku (Baukou). Thence it

homey, et entre les possessions Britanniques et Françaises et les sphères d'influence des deux pays à l'est du Niger, sont convenus des dispositions suivantes, qu'ils ont résolu de soumettre à l'agrément de leurs Gouvernements respectifs :—

ARTICLE I.

La frontière séparant la Colonie Britannique de la Côte d'Or des Colonies Françaises de la Côte d'Ivoire et du Soudan partira du point terminal nord de la frontière déterminée par l'Arrangement Franco-Anglais du 12 Juillet, 1893, c'est-à-dire de l'intersection du thalweg de la Volta Noire avec le 9^e degré de latitude nord, et suivra le thalweg de cette rivière vers le nord jusqu'à son intersection avec le 11^e degré de latitude nord. De ce point elle suivra dans la direction de l'est le dit parallèle de latitude jusqu'à la rivière qui est marquée sur la Carte No. 1 annexée au présent Protocole, comme passant immédiatement à l'est des villages de Souaga (Zwaga) et de Sebilla (Zebilla). Elle suivra ensuite le thalweg de la branche occidentale de cette rivière en remontant son cours jusqu'à son intersection avec le parallèle de latitude passant par le village de Sapeliga. De ce point la frontière suivra la limite septentrionale du terrain appartenant à Sapeliga jusqu'à la Rivière Nouhau (Nuhau), et se dirigera ensuite par le thalweg de cette rivière en remontant ou en descendant, suivant le cas jusqu'à un point situé à 3,219 mètres (2 milles) à l'est du chemin allant de Gambaga à Tingourkou (Tenkrûgu), par

shall rejoin by a straight line the 11th degree of north latitude at the intersection of this parallel with the road which is shown on Map No. 1 as leading from Sansanné-Mango to Pama, viâ Jebigu (Djebiga).

ARTICLE II.

The frontier between the British Colony of Lagos and the French Colony of Dahomey, which was delimited on the ground by the Anglo-French Boundary Commission of 1895, and which is described in the Report signed by the Commissioners of the two nations on the 12th October, 1896, shall henceforward be recognized as the frontier separating the British and French possessions from the sea to the 9th degree of north latitude.

From the point of intersection of the River Ocpara with the 9th degree of north latitude, as determined by the said Commissioners, the frontier separating the British and French possessions shall proceed in a northerly direction, and follow a line passing west of the lands belonging to the following places, viz., Tabira, Okuta (Okouta), Boria, Tere, Gbani, Ashigere (Yassikéra), and Dekala.

From the most westerly point of the lands belonging to Dekala the frontier shall be drawn in a northerly direction so as to coincide as far as possible with the line indicated on Map No. I annexed to the present Protocol, and shall strike the right bank of the Niger at a point situated 10 miles (16·093 metres) up-

Bankou (Bawku). De là, elle rejoindra en ligne droite le point d'Intersection du 11° degré de latitude nord avec le chemin indiqué sur la Carte No. 1 comme allant de Sansanné-Mango à Pama, par Djebiga (Jebigu).

ARTICLE II.

La frontière entre la Colonie Britannique de Lagos et la Colonie Française du Dahomey, qui a été délimitée sur le terrain par la Commission Anglo-Française de Délimitation de 1895, et qui est décrite dans le Rapport signé le 12 Octobre, 1896, par les Commissaires des deux nations, sera désormais reconnue comme la frontière séparant les possessions Britanniques et Françaises de la mer au 9° degré de latitude nord.

A partir du point d'intersection de la Rivière Ocpara avec le 9° degré de latitude nord, tel qu'il a été déterminé par les dits Commissaires, la frontière séparant les possessions Britanniques et Françaises se dirigera vers le nord, et suivra une ligne passant à l'ouest des terrains appartenant aux localités suivantes : Tabira, Okouta (Okuta), Boria, Tere, Gbani, Yassikéra (Ashigere), et Dekala.

De l'extrémité ouest du terrain appartenant à Dekala la frontière sera tracée dans la direction du nord, de manière à coïncider autant que possible avec la ligne indiquée sur la Carte No. 1 annexée au présent Protocole, et atteindra la rive droite du Niger en un point situé à 16·093 mètres (10 milles) stream from the centre of the town of Gere (Guiris) (the port of Ilo), measured as the crow flies.

ARTICLE III.

From the point specified in Article II, where the frontier separating the British and French possessions strikes the Niger, viz., a point situated on the right bank of that river, 10 miles (16·093 metres) up-stream from the centre of the town of Gere (Guiris), (the port of Ilo), the frontier shall follow a straight line drawn therefrom at right angles to the right bank as far as its intersection with the median line of the river. It shall then follow the median line of the river, up-stream, as far as its intersection with a line drawn perpendicularly to the left bank from the median line of the mouth of the depression or dry water-course, which, on Map No. 2 annexed to the present Protocol, is called the Dallul Mauri, and is shown thereon as being situated at a distance of about 17 miles (27·359 metres), measured as the crow flies, from a point on the left bank opposite the above-mentioned village of Gere (Guiris).

From this point of intersection the frontier shall follow this perpendicular till it meets the left bank of the river.

ARTICLE IV.

To the east of the Niger the frontier separating the British and French possessions shall follow the line indicated on Map No. 2, which is annexed to the present Protocol

en amont du centre de la ville de Guiris (Géré) (port d'Ilo), mesurés à vol d'oiseau.

ARTICLE III.

Du point spécifié dans l'Article II, où la frontière séparant les possessions Britanniques et Françaises atteint le Niger, c'est-à-dire, d'un point situé sur la rive droite de ce fleuve à 16·093 mètres (10 milles) en amont du centre de la ville de Guiris (Géré) (port d'Ilo), la frontière suivra la perpendiculaire élevée de ce point sur la rive droite du fleuve jusqu'à son intersection avec la ligne médiane du fleuve. Elle suivra ensuite en remontant la ligne médiane du fleuve jusqu'à son intersection avec une ligne perpendiculaire à la rive gauche et partant de la ligne médiane du débouché de la dépression, ou cours d'eau asséché, qui, sur la Carte No. 2 annexée au présent Protocole, est appelé Dallul Mauri, et y est indiqué comme étant situé à une distance d'environ 27·359 mètres (17 milles) mesurés á vol d'oiseau d'un point sur la rive gauche en face du village ci-dessus mentionné de Guiris (Géré).

De ce point d'intersection, la frontière suivra cette perpendiculaire jusqu'à sa rencontre avec la rive gauche du fleuve.

ARTICLE IV.

A l'est du Niger la frontière séparant les possessions Britanniques et Françaises suivra la ligne indiquée sur la Carte No. 2, annexée au présent Protocole.

Starting from the point on the left bank of the Niger indicated in the previous Article, viz., the median line of the Dallul Mauri, the frontier shall follow this median line until it meets the circumference of a circle drawn from the centre of the town of Sokoto with a radius of 100 miles (160·932 metres). From this point it shall follow the northern arc of this circle as far as its second intersection with the 14th parallel of north latitude. From this second point of intersection it shall follow this parallel eastward for a distance of 70 miles (112·652 metres); then proceed due south until it reaches the parallel of 13° 20′ north latitude, then eastward along this parallel for a distance of 250 miles (402·230 metres); then due north until it regains the 14th parallel of north latitude; then eastwards along this parallel as far as its intersection with the meridian passing 35′ east of the centre of the town of Kuka, and thence this meridian southward until its intersection with the southern shore of Lake Chad.

The Government of the French Republic recognizes, as falling within the British sphere, the territory to the east of the Niger, comprised within the above-mentioned line, the Anglo-German frontier, and the sea.

The Government of Her Britannic Majesty recognizes, as falling within the French sphere, the northern, eastern, and southern shores of Lake Chad, which are comprised between the point of intersection of the 14th degree of north latitude, with the western shore

Partant du point sur la rive gauche du Niger, indiqué à l'Article précédent, c'est-à-dire la ligne médiane du Dallul Mauri, la frontière suivra cette ligne médiane jusqu'à sa rencontre avec la circonférence d'un cercle décrit du centre de la ville de Sokoto avec un rayon de 160·932 mètres (100 milles). De ce point elle suivra l'arc septentrional de ce cercle jusqu'à sa seconde intersection avec le 14ᵉ degré de latitude nord. De ce second point d'intersection elle suivra ce parallèle vers l'est sur une distance de 112·652 mètres (70 milles); puis se dirigera au sud vrai jusqu'à sa rencontre avec le parallèle 13° 20′ de latitude nord; puis, vers l'est, suivant ce parallèle sur une distance de 402·230 mètres (250 milles); puis au nord vrai jusqu'à ce qu'elle rejoigne le 14ᵉ parallèle de latitude nord; puis vers l'est sur ce parallèle, jusqu'à son intersection avec le méridien passant à 35′ est du centre de la ville de Kuka; puis ce méridien vers le sud jusqu'à son intersection avec la rive sud du Lac Tchad.

Le Gouvernement de la République Française reconnaît comme tombant dans la sphère Britannique le territoire à l'est du Niger compris entre la ligne susmentionnée, la frontière Anglo-Allemande, et la mer.

Le Gouvernement de Sa Majesté Britannique reconnaît comme tombant dans la sphère Française les rives nord, est, et sud du Lac Tchad, qui sont comprises entre le point d'intersection du 14ᵉ degré de latitude nord avec la rive occidentale du lac et le point d'incidence sur

of the lake and the point of incidence on the shore of the lake of the frontier determined by the Franco-German Convention of the 15th March, 1894.

ARTICLE V.

The frontiers set forth in the present Protocol are indicated on the annexed Maps, which are marked 1 and 2 respectively.

The two Governments undertake to appoint within a year as regards the frontiers west of the Niger, and within two years as regards the frontier east of that river, to count in each case from the date of the exchange of ratifications of the Convention which is to be concluded between them for the purpose of confirming the present Protocol, Commissioners who will be charged with delimiting on the spot the lines of demarcation between the British and French possessions, in conformity and in accordance with the spirit of the stipulations of the present Protocol.

With respect to the delimitation of the portion of the Niger in the neighbourhood of Ilo and the Dallul Mauri, referred to in Article III, the Boundary Commissioners shall, in determining on the spot the river frontier, distribute equitably between the two Contracting Powers such islands as may be found to interfere with the delimitation of the river as defined in Article III.

It is understood between the two Contracting Powers that no subsequent alteration in the position of the median line of the river shall affect the owner-

le lac de la frontière déterminée par la Convention Franco-Allemande du 15 Mars, 1894.

ARTICLE V.

Les frontières déterminées par le présent Protocole sont inscrites sur les Cartes Nos. 1 et 2 ci-annexées.

Les deux Gouvernements s'engagent à désigner, dans le délai d'un an pour les frontières à l'ouest du Niger, et de deux ans pour les frontières à l'est de ce même fleuve, à compter de la date de l'échange des ratifications de la Convention qui doit être conclue aux fins de confirmer le présent Protocole, des Commissaires qui seront chargés d'établir sur les lieux les lignes de démarcation entre les possessions Britanniques et Françaises, en conformité et suivant l'esprit des stipulations du présente Protocole.

En ce qui concerne la délimitation de la portion du Niger dans les environs d'Ilo et du Dallul Mauri visée à l'Article III, les Commissaires chargés de la délimitation, en déterminant sur les lieux la frontière fluviale, répartiront équitablement entre les deux Puissances Contractantes les îles qui pourront faire obstacle à la délimitation fluviale telle qu'elle est décrite à l'Article III.

Il est entendu entre les deux Puissances Contractantes qu'aucun changement ultérieur dans la position de la ligne médiane du fleuve n'affectera les ship of the islands assigned to each of the two Powers by the *procès-verbal* of the Commissioners, after being duly approved by the two Governments.

ARTICLE VI.

The two Contracting Powers engage reciprocally to treat with consideration (" bienveillance ") the native Chiefs who, having had Treaties with one of them, shall, in virtue of the present Protocol, come under the sovereignty of the other.

ARTICLE VII

Each of the two Contracting Powers undertakes not to exercise any political action in the spheres of the other, as defined by Articles I, II, III, and IV of the present Protocol.

It is understood by this that each Power will not, in the spheres of the other, make territorial acquisitions, conclude Treaties, accept sovereign rights or Protectorates, nor hinder nor dispute the influence of the other.

ARTICLE VIII.

Her Britannic Majesty's Government will grant on lease to the Government of the French Republic, for the objects, and on the conditions specified in the form of lease annexed to the present Protocol, two pieces of ground to be selected by the

droits de propriété sur les îles qui auront été attribuées à chacune des deux Puissances par le procès-verbal des Commissaires dûment approuvé par les deux Gouvernements.

ARTICLE VI.

Les deux Puissances Contractantes s'engagent réciproquement à traiter avec bienveillance (" consideration ") les Chefs indigènes qui, ayant eu des Traités avec l'une d'elles, se trouveront, en vertu du présent Protocole, passer sous la souveraineté de l'autre.

ARTICLE VII.

Chacune des deux Puissances Contractantes s'engage à n'exercer aucune action politique dans les sphères de l'autre, telles qu'elles sont définies par les Articles I, II, III, et IV du présent Protocole.

Il est convenu par là que chacune des deux Puissances s'interdit de faire des acquisitions territoriales dans les sphères de l'autre, d'y conclure des Traités, d'y accepter des droits de souveraineté ou de Protectorat, d'y gêner ou d'y contester l'influence de l'autre.

ARTICLE VIII.

Le Gouvernement de Sa Majesté Britannique cédera à bail au Gouvernement de la République Française, aux fins et conditions spécifiées dans la modèle de bail annexé au présent Protocole, deux terrains à choisir par le Gouvernement de la Ré-

Government of the French Republic in conjunction with Her Britannic Majesty's Government, one of which will be situated in a suitable spot on the right bank of the Niger between Leaba and the junction of the River Moussa (Mochi) with the former river, and the other on one of the mouths of the Niger. Each of these pieces of land shall have a river frontage not exceeding 400 metres in length, and shall form a block, the area of which shall not be less than 10 nor more than 50 hectares in extent. The exact boundaries of these pieces of land shall be shown on a plan annexed to each of the leases.

The conditions upon which the transit of merchandize shall be carried on on the Niger, its affluents, its branches and outlets, as well as between the piece of ground between Leaba and the junction of the River Moussa (Mochi) mentioned above, and the point upon the French frontier to be specified by the Government of the French Republic, will form the subject of Regulations, the details of which shall be discussed by the two Governments immediately after the signature of the present Protocol.

Her Britannic Majesty's Government undertake to give four months' notice to the French Government of any modification in the Regulations in question, in order to afford to the said French Government the opportunity of laying before the British Government any representations which it may wish to make.

publique Française de concert avec le Gouvernement de Sa Majesté Britannique, dont l'un sera situé en un endroit convenable sur la rive droite du Niger entre Leaba et le confluent de la Rivière Moussa (Mochi) avec ce fleuve, et l'autre sur l'une des embouchures du Niger.

Chacun de ces terrains sera en bordure sur le fleuve sur une étendue de 400 mètres au plus, et formera un ténément dont la superficie ne sera pas inférieure à 10 hectares ni supérieure à 50 hectares. Les limites exactes de ces terrains seront indiquées sur un plan annexé à chacun des baux.

Les conditions dans lesquelles s'effectuera le transit des marchandises sur le cours du Niger, de ses affluents, de ses embranchements et issues, ainsi qu'entre le terrain ci-dessus mentionné situé entre Leaba et le confluent de la Rivière Moussa (Mochi), et le point à désigner par le Gouvernement de la République Française sur la frontière Française, feront l'objet d'un Règlement dont les détails seront discutés par les deux Gouvernements immédiatement après la signature du présent Protocole.

Le Gouvernement de Sa Majesté Britannique s'engage à donner avis quatre mois à l'avance au Gouvernement de la République Française de toute modification dans le Règlement en question, afin de mettre le dit Gouvernement Français en mesure d'exposer au Gouvernement Britannique toutes représentations qu'il pourrait désirer faire.

ARTICLE IX.

Within the limits defined on Map No. 2, which is annexed to the present Protocol, British subjects and British protected persons and French citizens and French protected persons, as far as regards their persons and goods, and the merchandize the produce or the manufacture of Great Britain and France, their respective Colonies, possessions, and Protectorates, shall enjoy for thirty years from the date of the exchange of the ratifications of the Convention mentioned in Article V the same treatment in all matters of river navigation, of commerce, and of tariff and fiscal treatment and taxes of all kinds.

Subject to this condition, each of the two Contracting Powers shall be free to fix, in its own territory, and as may appear to it most convenient, the tariff and fiscal treatment and taxes of all kinds.

In case neither of the two Contracting Powers shall have notified twelve months before the expiration of the abovementioned term of thirty years its intention to put an end to the effects of the present Article, it shall remain in force until the expiration of one year from the day on which either of the Contracting Powers shall have denounced it.

In witness whereof, the undersigned Delegates have drawn up and signed the present Protocol.

Done at Paris, in duplicate, the 14th day of June, in the year of our Lord 1898.

ARTICLE IX.

A l'intérieur des limites tracées sur la Carte No. 2, annexée au présent Protocole, les sujets Britanniques et protégés Britanniques, les citoyens Français et protégés Français, pour leurs personnes comme pour leurs biens, les marchandises et produits naturels ou manufacturés de la Grande-Bretagne et de la France, de leurs Colonies, possessions, et Protectorats respectifs, jouiront pendant trente années à partir de l'échange des ratifications de la Convention mentionnée à l'Article V, du même traitement pour tout ce qui concerne la navigation fluviale, le commerce, le régime douanier et fiscal, et les taxes de toute nature.

Sous cette réserve, chacune des deux Puissances Contractantes conservera la liberté de régler sur son territoire et à sa convenance le régime douanier et fiscal et les taxes de toute nature.

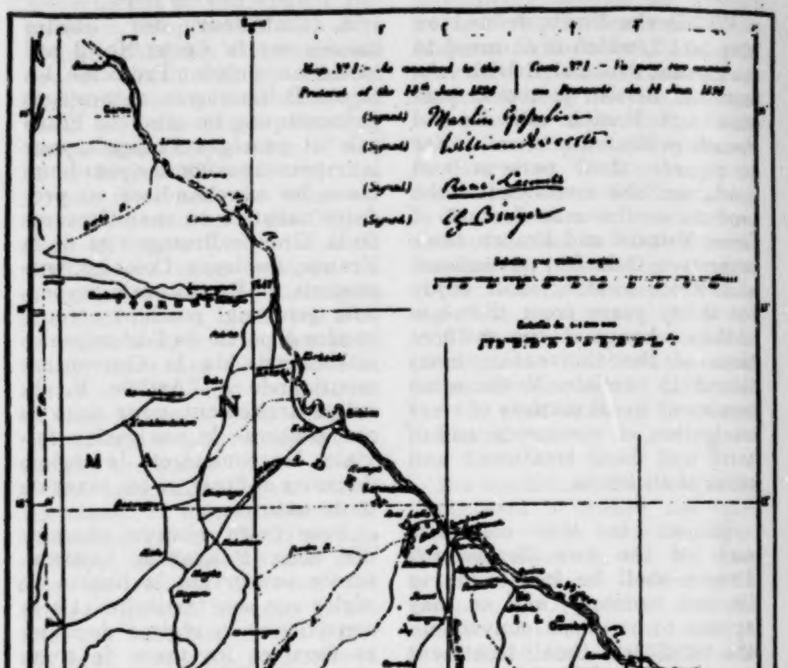
Dans le cas où aucune des Puissances Contractantes n'aurait notifié douze mois avant l'échéance du terme précité de trente années son intention de faire cesser les effets du présent Article, il continuera à être obligatoire jusqu'à l'expiration d'une année à partir du jour où l'une ou l'autre des Puissances Contractantes l'aura dénoncé.

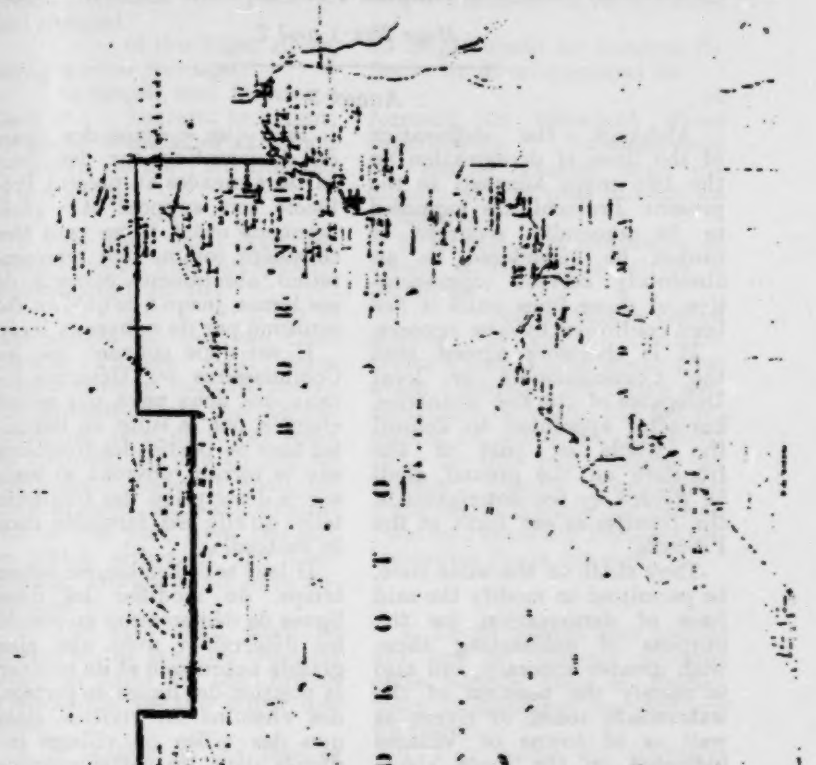
En foi de quoi, les Délégués soussignés ont dressé le présent Protocole et y ont apposé leurs signatures.

Fait à Paris, en double expédition, le 14 Juin, 1898.

(Signed) MARTIN GOSSELIN.
WILLIAM EVERETT.
RENÉ LECOMTE.
G. BINGER.

MAP N° 1


Map No 1:- As annexed to the Protocol of the 14th June 1898
Carte No 1 - Vu pour être annexée au Protocole du 14 Juin 1898
(Signed) Martin Gosselin
(Signed) William Everett
(Signed) René Lecomte
(Signed) G. Binger
M A N
K O U A N D E
B O U S S A
N I K K I
D A H O M E Y
L A G O S


SOKOTO

Annexes 1 and 2.

Maps Nos. 1 *and* 2.

Annex 3.

Although the delineation of the lines of demarcation on the two maps annexed to the present Protocol are supposed to be generally accurate, it cannot be considered as an absolutely correct representation of those lines until it has been confirmed by new surveys.

It is therefore agreed that the Commissioners or local Delegates of the two countries, hereafter appointed to delimit the whole or part of the frontiers on the ground, shall be guided by the description of the frontier as set forth in the Protocol.

They shall, at the same time, be permitted to modify the said lines of demarcation for the purpose of delineating them with greater accuracy, and also to rectify the position of the watersheds, roads, or rivers, as well as of towns or villages indicated on the maps above referred to.

Any alterations or corrections proposed by common consent by the said Commissioners or Delegates shall be submitted for the approval of their respective Governments.

Bien que le tracé des lignes de démarcation sur les deux cartes annexées au présent Protocole soit supposé être généralement exact, il ne peut être considéré comme une représentation absolument correcte de ces lignes, jusqu'à ce qu'il ait été confirmé par de nouveaux levés

Il est donc convenu que les Commissaires ou Délégués locaux des deux pays, qui seront chargés, par la suite, de délimiter tout ou partie des frontières sur le terrain, devront se baser sur la description des frontières telle qu'elle est formulée dans le Protocole.

Il leur sera loisible, en même temps, de modifier les dites lignes de démarcation en vue de les déterminer avec une plus grande exactitude et de rectifier la position des lignes de partage, des chemins ou rivières, ainsi que des villes ou villages indiqués dans les cartes susmentionnées.

Les changements ou corrections proposés d'un commun accord par les dits Commissaires ou Délégués seront soumis à l'approbation des Gouvernements respectifs.

(Signed) MARTIN GOSSELIN.
WILLIAM EVERETT.
RENÉ LECOMTE.
G. BINGER.

Annex 4.

Form of Lease.

1. The Government of Her Britannic Majesty grants in lease to the Government of the

Modèle de Bail.

1. Le Gouvernement de Sa Majesté Britannique cède à bail au Gouvernement de la Répu-

French Republic the piece of land situated of the Niger River, having a river frontage in length, and forming a block of hectares in extent, the exact boundaries of which are shown on the plan annexed to this lease.

2. The lease shall run for thirty years uninterruptedly, commencing from the , but in case neither of the two Contracting Powers shall have notified twelve months before the expiration of the above-mentioned term of thirty years its intention to put an end to the present lease, it shall remain in force until the expiration of one year from the day on which either of the Contracting Powers shall have denounced it.

3. The said land shall be subject to the laws for the time being in force in the British Protectorate of the Niger districts.

4. A portion of the land so leased, which shall not exceed 10 hectares in extent, shall be used exclusively for the purposes of the landing, storage, and transhipment of goods, and for such purposes as may be considered subsidiary thereto, and the only permanent residents shall be the persons employed in the charge and for the security of such goods, their families, and servants.

5. The Government of the French Republic binds itself—

(*a*.) To fence in that portion of the said land referred to in

blique Française un terrain situé du Niger, ayant en bordure du fleuve un développement de , et formant un tènement d'une superficie de hectares, dont les limites exactes sont indiquées sur le plan annexé au présent bail.

2. Le bail aura une durée de trente années consécutives à partir de , mais, dans le cas où aucune des Parties Contractantes n'aura notifié douze mois avant l'échéance du terme susmentionné de trente ans son intention de mettre fin au présent bail, le dit bail restera en vigueur jusqu'à l'expiration d'une année à partir du jour où l'une ou l'autre des Parties Contractantes l'aura dénoncé.

3. Le dit terrain sera soumis aux lois en vigueur pendant cette période dans le Protectorat Britannique des districts du Niger.

4. Une partie du territoire ainsi cédé à bail, et dont l'étendue n'excédera pas 10 hectares, sera utilisée exclusivement pour les opérations de débarquement, d'emmagasinage et de transbordement des marchandises, et pour toutes fins pouvant être considérées comme subsidiaires à ces opérations, et les seuls résidents permanents seront les personnes employées pour le service et la sécurité des dites marchandises, avec leurs familles et leurs domestiques.

5. Le Gouvernement de la République Française s'engage—

(*a*.) A clore la partie du dit terrain mentionnée à l'Article 4

Article 4 of this lease (with the exception of the side which faces the River Niger) by a wall, or by a stockade, or by any other sort of continuous fence, which shall not be less in height than 3 metres. There shall be one door only on each of the three sides of the fence.

(*b.*) Not to permit on the said portion of land the receipt or exit of any goods in contravention of the British Customs Regulations. Any act in violation of this stipulation shall be considered as evasion of customs duties, and shall be punished accordingly.

(*c.*) Not to sell nor allow the sale of any goods in retail in the said portion of land. The sale of quantities less in weight or measure than 1,000 kilog., 1,000 litres, or 1,000 metres is held to be sale in retail. It is understood that this stipulation shall not apply to goods in transit.

(*d.*) The Government of the French Republic, or its sublessees or agents, shall have the right to build on the said portion of land, warehouses, houses for offices, and other buildings necessary for the operations of landing, storing, and transhipping goods, and also to construct on that part of the foreshore of the River Niger comprised in the lease, quays, bridges, and docks, and any other works required in connection with the said operations, provided that the designs of all works so to be constructed on the foreshore of the river are furnished to the British authorities for examination, in order to ascertain that these works would not in any

du présent bail (à l'exception du côté bordant le Niger) par un mur ou par une palissade ou par toute autre sorte de clôture continue, dont la hauteur ne sera pas inférieure à 3 mètres; il n'y aura qu'une seule porte sur chacun des trois côtés de la clôture.

(*b.*) A ne pas permettre, dans la dite partie de terrain, la réception ou la sortie d'aucune marchandise en contravention avec les Règlements Douaniers Britanniques. Tout acte fait en violation de cette stipulation sera considéré comme équivalent à une fraude de droit de douane, et sera puni en conséquence.

(*c.*) A ne pas vendre ni autoriser à vendre des marchandises au détail sur la dite partie de terrain. La vente de quantités d'un poids ou d'une mesure inférieure à 1,000 kilog., 1,000 litres, ou 1,000 mètres, sera considérée comme vente au détail. Il est entendu que cette stipulation n'est pas applicable aux marchandises en transit.

(*d.*) Le Gouvernement de la République Française, ou ses sous-locataires ou agents, auront le droit de construire, sur la dite portion de terrain, des magasins, des maisons pour bureaux, et tous autres édifices nécessaires pour les opérations de débarquement, l'emmagasinement, et le transbordement des marchandises, et également de construire, dans la partie de l'avant-rivage du Niger comprise dans le bail, des quais, des ponts, des docks, et tous autres ouvrages nécessaires en vue des dites opérations, pourvu que les plans de tout ouvrage à construire, ainsi sur l'avant-rivage du fleuve soient communiqués pour examen aux autorités way inconvenience the navigation of the river, or be in conflict with the rights of others or with the Customs system.

(e.) It is understood that the shipping, landing, and storing of goods on the said portion of land shall be conducted in all respects in accordance with the laws for the time being in force in the British Protectorate of the Niger districts.

6. The Government of the French Republic binds itself to pay annually to Her Majesty's Government, on the 1st January of each year, a rent of 1 fr.

7. The Government of the French Republic shall have the right to sublet the whole or any portion of the land passing under this lease, provided that the sub-lessees shall not use the land for any other purposes than those stipulated in this lease, and that the said Government shall remain responsible to the Government of Her Britannic Majesty for the observance of the stipulations of this lease.

8. The Government of Her Britannic Majesty binds itself to fulfil towards the lessee all duties incumbent upon it as owner of the said land.

9. At the expiration of the term of thirty years specified in Article 2 of this lease, the French Government, or its sublessees, may remain in possession and in the enjoyment for a period of time which, together with the said terms of thirty years, shall not exceed ninety-

Britanniques, afin que vérification puisse être faite que ces ouvrages ne sauraient en aucune manière gêner la navigation du fleuve, ni être en opposition avec les droits de tiers ou avec le système Douanier.

(e.) Il est entendu que l'embarquement, le débarquement, et l'emmagasinement des marchandises sur la dite partie de terrain seront effectués, à tous égards, conformément aux lois alors en vigueur dans le Protectorat Britannique des districts du Niger.

6. Le Gouvernement de la République Française s'engage à payer annuellement au Gouvernement Britannique, le 1er Janvier de chaque année, un loyer de 1 fr.

7. Le Gouvernement de la République Française aura le droit de sous-louer tout ou partie du terrain faisant l'objet du présent bail, pourvu que les sous-locataires ne fassent usage de ce terrain à d'autres fins que celles stipulées dans le présent bail, et que le dit Gouvernement demeure responsable envers le Gouvernement de Sa Majesté Britannique de l'observation des stipulations du présent bail.

8. Le Gouvernement de Sa Majesté Britannique s'engage à remplir à l'égard du preneur à bail toutes les obligations qui lui incombent en sa qualité de propriétaire du dit terrain.

9. A l'expiration du terme de trente ans spécifié à l'Article 2 du présent bail, le Gouvernement Français, ou ses sous-locataires, pourront rester pour une période qui, cumulée avec le dit terme de trente ans, n'excédera pas quatre-vingt-dix-neuf ans, en possession et jouis-

nine years, of the constructions and installations which shall have been made on the leased land. Nevertheless, the Government of Her Britannic Majesty reserves to itself, on the expiration or determination of the lease, in accordance with the conditions specified in Article 2, the right of purchasing such constructions and installations at a valuation to be determined by experts who will be appointed by the two Governments, on the understanding that notification of their intention be furnished to the French Government ten months, at latest, before the expiration or determination of the lease. In case of disagreement between them, the experts shall choose a referee, whose decision shall be final.

In calculating the value of the above-mentioned constructions and installations, the experts shall be guided by the following considerations:—

(*a.*) In the event of the lease expiring at the end of the first thirty years, the purchase value of the property to be sold shall be the full market value.

(*b.*) In the event of the lease being determined at any time after thirty years, the value of the property to be sold shall be the full market value less a fraction, whose numerator shall be the number of years the lease has run, minus thirty, and whose denominator shall be sixty-nine.

10. The land comprised in the lease shall be measured and marked out without delay.

11. If a difference of opinion should arise between the two Governments as to the interpretation of the lease, or as to

sance des constructions et installations qui auront été faites sur le terrain cédé à bail. Toutefois, le Gouvernement de Sa Majesté Britannique se réservera, à l'expiration ou à la mise à terme du présent bail survenue dans les conditions spécifiées à l'Article 2, le droit de racheter à dire d'experts, qui seront nommés par les deux Gouvernements, les dites constructions et installations, moyenannt que notification de son intention soit donnée au Gouvernement Français, au plus tard dix mois avant l'expiration ou mise à terme du bail. En cas de dissentiment entre eux, les experts désigneront un tiers Arbitre, dont la décision sera définitive.

Pour calculer la valeur des constructions et installations ci-dessus mentionnées, les experts se guideront d'après les considérations suivantes :—

(*a.*) Dans le cas où le bail expirerait à la fin des trente premières années, la valeur de rachat des biens sera la pleine valeur marchande.

(*b.*) Dans le cas où le bail cesserait postérieurement au terme de trente ans, la valeur à payer sera la pleine valeur marchande, moins une fraction, dont le numérateur sera le nombre d'années qu'aura duré le bail, diminué de trente, et dont le dénominateur sera soixante-neuf.

10. Le terrain compris dans le bail sera arpenté et délimité sans retard.

11. Dans le cas où une différence d'opinion surgirait entre les deux Gouvernements sur l'interprétation du bail ou sur

any matter arising in connection therewith, it shall be settled by the arbitration of a jurisconsult of third nationality, to be agreed upon by the two Governments.

tout autre sujet se rapportant à ce bail, la question sera réglée par l'arbitrage d'un jurisconsulte d'une nationalité tierce, désigné d'accord par les deux Gouvernements.

(Signed) MARTIN GOSSELIN.
WILLIAM EVERETT.
RENÉ LACOMTE.
G. BINGER.

The present Convention shall be ratified, and the ratifications exchanged at Paris within the period of six months, or sooner if possible.

La présente Convention sera ratifiée, et les ratifications en seront échangées à Paris dans le délai de six mois, ou plus tôt si faire se peut.

In witness whereof the Undersigned have signed the present Convention and have affixed thereto their seals.

En foi de quoi les Soussignés ont signé la présente Convention, et y ont apposé leurs cachets.

Done in duplicate, at Paris, the 14th June, 1898.

Fait à Paris, en double exemplaire, le 14 Juin, 1898.

(Signed) EDMUND MONSON.
G. HANOTAUX.

PROTOCOL PROLONGING THE PERIOD FOR THE EXCHANGE OF RATIFICATIONS.

Signed at Paris, December 8, 1898.

The Undersigned, his Excellency the Right Honourable Sir Edmund Monson, G.C.B., Ambassador Extraordinary and Plenipotentiary of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, to the President of the French Republic; and his Excellency

Les Soussignés, son Excellence le Très Honorable Sir Edmund Monson, G.C.B., Ambassadeur Extraordinaire et Plénipotentiaire de Sa Majesté la Reine du Royaume-Uni de Grande-Bretagne et d'Irlande, Impératrice des Indes, près le Président de la République Française; et son Excellence

M. Delcassé, Minister of Foreign Affairs of the French Republic, duly authorized to this effect, have agreed as follows:—

The delay of six months, fixed by the Convention of the 14th June, 1898, for the exchange of the ratifications of the said Convention, is extended by six months and increased to one year.

Done at Paris, in duplicate, this 8th day of December, 1898.

M. Delcassé, Ministre des Affaires Étrangères de la République Française, dûment autorisés à cet effet, sont convenus de ce qui suit:—

Le délai de six mois, fixé par la Convention du 14 Juin, 1898, pour l'échange des ratifications de la dite Convention, est prorogé de six mois et porté à une année.

Fait en double, à Paris, le 8 Décembre, 1898.

(L.S.) (Signed) EDMUND MONSON.
DELCASSÉ.

DECLARATION.

Signed at London, March 21, 1899.

[*Ratifications exchanged at Paris, June 13, 1899.*]

The Undersigned, duly authorized by their Governments, have signed the following Declaration:—

The IVth Article of the Convention of the 14th June, 1898, shall be completed by the following provisions, which shall be considered as forming an integral part of it:—

1. Her Britannic Majesty's Government engages not to acquire either territory or political influence to the west of the line of frontier defined in the following paragraph, and the Government of the French Republic engages not to acquire

Les Soussignés, dûment autorisés à cet effet par leurs Gouvernements, ont signé la Déclaration suivante:—

L'Article IV de la Convention du 14 Juin, 1898, est complété par les dispositions suivantes, qui seront considérées comme en faisant partie intégrante:—

1. Le Gouvernement de Sa Majesté Britannique s'engage à n'acquérir ni territoire ni influence politique à l'ouest de la ligne-frontière définie dans le paragraphe suivant, et le Gouvernement de la République Française s'engage à n'acquérir

either territory or political influence to the east of the same line.

2. The line of frontier shall start from the point where the boundary between the Congo Free State and French territory meets the water-parting between the watershed of the Nile and that of the Congo and its affluents. It shall follow in principle that water-parting up to its intersection with the 11th parallel of north latitude. From this point it shall be drawn as far as the 15th parallel in such manner as to separate, in principle, the Kingdom of Wadai from what constituted in 1882 the Province of Darfur; but it shall in no case be so drawn as to pass to the west beyond the 21st degree of longitude east of Greenwich (18° 40′ east of Paris), or to the east beyond the 23rd degree of longitude east of Greenwich (20° 40′ east of Paris).

3. It is understood, in principle, that to the north of the 15th parallel the French zone shall be limited to the north-east and east by a line which shall start from the point of intersection of the Tropic of Cancer with the 16th degree of longitude east of Greenwich (13° 40′ east of Paris), shall run thence to the south-east until it meets the 24th degree of longitude east of Greenwich (21° 40′ east of Paris), and shall then follow the 24th degree until it meets, to the north of the 15th parallel of latitude, the frontier of Darfur as it shall eventually be fixed.

4. The two Governments engage to appoint Commissioners who shall be charged to delimit on the spot a frontier-line in

ni territoire ni influence politique à l'est de cette même ligne.

2. La ligne-frontière part du point où la limite entre l'État Libre du Congo et le territoire Français rencontre la ligne de partage des eaux coulant vers le Nil de celles qui s'écoulent vers le Congo et ses affluents. Elle suit en principe cette ligne de partage des eaux jusqu'à sa rencontre avec le 11^{e} parallèle de latitude nord. A partir de ce point elle sera tracée jusqu'au 15^{e} parallèle de façon à séparer en principe le Royaume de Ouadai de ce qui était en 1882 la Province de Darfour; mais son tracé ne pourra en aucun cas dépasser à l'ouest le 21^{e} degré de longitude est de Greenwich (18° 40′ est de Paris), ni à l'est le 23^{e} degré de longitude est de Greenwich (20° 40′ est de Paris).

3. Il est entendu en principe qu'au nord du 15^{e} parallèle la zone Française sera limitée au nord-est et à l'est par une ligne qui partira du point de rencontre du Tropique du Cancer avec le 16^{e} degré de longitude est de Greenwich (13° 40′ est de Paris), descendra dans la direction du sud-est jusqu'à sa rencontre avec le 24^{e} degré de longitude est de Greenwich (21° 40′ est de Paris), et suivra ensuite le 24^{e} degré jusqu'à sa rencontre au nord du 15^{e} parallèle de latitude avec la frontière du Darfour telle qu'elle sera ultérieurement fixée.

4. Les deux Gouvernements s'engagent à désigner des Commissaires qui seront chargés d'établir sur les lieux une ligne-

accordance with the indications given in paragraph 2 of this Declaration. The result of their work shall be submitted for the approbation of their respective Governments.

It is agreed that the provisions of Article IX of the Convention of the 14th June, 1898, shall apply equally to the territories situated to the south of the 14° 20′ parallel of north latitude, and to the north of the 5th parallel of north latitude, between the 14° 20′ meridian of longitude east of Greenwich (12th degree east of Paris) and the course of the Upper Nile.

Done at London, the 21st March, 1899.

frontière conforme aux indications du paragraphe 2 de la présente Déclaration. Le résultat de leurs travaux sera soumis à l'approbation de leurs Gouvernements respectifs.

Il est convenu que les dispositions de l'Article IX de la Convention du 14 Juin, 1898, s'appliqueront également aux territoires situés au sud du 14° 20′ de latitude nord, et au nord du 5^e degré de latitude nord entre le 14° 20′ de longitude est de Greenwich (12^e degré est de Paris) et le cours du Haut-Nil.

Fait à Londres, le 21 Mars, 1899.

(L.S.) (Signed) SALISBURY.
(L.S.) (Signed) PAUL CAMBON.

MINISTÈRE DES AFFAIRES ÉTRANGÈRES

DOCUMENTS DIPLOMATIQUES

AFRIQUE

CONVENTION

ENTRE LA FRANCE ET LA GRANDE-BRETAGNE
FIXANT LA DÉLIMITATION
DES POSSESSIONS FRANÇAISES DE LA CÔTE D'IVOIRE, DU SOUDAN ET DU DAHOMEY.
DES COLONIES BRITANNIQUES DE LA CÔTE D'OR ET DE LAGOS,
ET DES AUTRES POSSESSIONS BRITANNIQUES À L'OUEST DU NIGER
AINSI QUE DES POSSESSIONS FRANÇAISES
ET BRITANNIQUES, ET DES SPHÈRES D'INFLUENCE DES DEUX PAYS
À L'EST DU NIGER,
SIGNÉE À PARIS, LE 14 JUIN 1898.

PARIS
IMPRIMERIE NATIONALE

M DCCC XCVIII

CONVENTION

ENTRE LA FRANCE ET LA GRANDE-BRETAGNE FIXANT LA DÉLIMITATION DES POSSESSIONS FRANÇAISES DE LA CÔTE D'IVOIRE, DU SOUDAN ET DU DAHOMEY, DES COLONIES BRITANNIQUES DE LA CÔTE D'OR ET DE LAGOS, ET DES AUTRES POSSESSIONS BRITANNIQUES À L'OUEST DU NIGER AINSI QUE DES POSSESSIONS FRANÇAISES ET BRITANNIQUES, ET DES SPHÈRES D'INFLUENCE DES DEUX PAYS À L'EST DU NIGER,

SIGNÉE À PARIS, LE 14 JUIN 1898 (1).

Le Gouvernement de la République française et le Gouvernement de S. M. la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, ayant résolu, dans un esprit de bonne entente mutuelle, de confirmer le Protocole avec ses quatre annexes préparé par leurs délégués respectifs pour la délimitation des possessions françaises de la côte d'Ivoire, du Soudan et du Dahomey, et des Colonies britanniques de la Côte-d'Or et de Lagos, et des autres possessions britanniques à l'Ouest du Niger ainsi que pour la délimitation des possessions françaises et britanniques et des sphères d'influence des deux pays à l'Est du Niger, les soussignés:

S. E. M. Gabriel Hanotaux, Ministre des Affaires étrangères de la République française et S. E. le très honorable Sir Edmund Monson, Ambassadeur de S. M. la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, près le Président de la République française, dûment autorisés à cet effet, confirment le Protocole avec ses annexes, dressé à Paris, le 14 juin 1898, et dont la teneur suit :

PROTOCOLE.

Les soussignés :

René Lecomte, Ministre plénipotentiaire, Sous-Directeur adjoint à la Direction des Affaires politiques du Ministère des Affaires étrangères;

Louis-Gustave Binger, Gouverneur des colonies, hors cadres, Directeur des Affaires d'Afrique au Ministère des colonies.

Martin Gosselin, Ministre plénipotentiaire, premier Secrétaire de l'Ambassade de Sa Majesté Britannique, à Paris;

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(1) Convention non encore rectifiée et devant être auparavant soumise à l'approbation de la Chambre des députés et du Sénat.

William Everett, Colonel dans l'armée de terre de Sa Majesté Britannique et « Assistant-Adjudant général » au Bureau des renseignements au Ministère de la Guerre ;

Délégués respectivement par le Gouvernement de la République française et par le Gouvernement de Sa Majesté Britannique à l'effet de préparer, en exécution des déclarations échangées à Londres le 5 août 1890 et le 15 janvier 1896, un projet de délimitation définitive entre les possessions françaises de la Côte d'Ivoire du Soudan et du Dahomey et les Colonies britanniques de la Côte d'Or et de Lagos et les autres possessions britanniques à l'Ouest du Niger et, entre les possessions françaises et britanniques et les sphères d'influence des deux pays à l'Est du Niger sont convenus des dispositions suivantes qu'ils ont résolu de soumettre à l'agrément de leurs Gouvernements respectifs :

ARTICLE PREMIER.

La frontière séparant les Colonies françaises de la Côte d'Ivoire et du Soudan de la Colonie britannique de la Côte d'Or partira du point terminal Nord de la frontière déterminée par l'arrangement franco-anglais du 12 juillet 1893, c'est-à-dire de l'intersection du thalweg de la Volta Noire avec le 9e degré de latitude nord et suivra le thalweg de cette rivière vers le nord jusqu'à son intersection avec le 11e degré de latitude Nord.

De ce point elle suivra dans la direction de l'Est ledit parallèle de latitude jusqu'à la rivière qui est marquée sur la carte n° 1 annexée au présent Protocole comme passant immédiatement à l'Est des villages de Souaga (Zwaga) et de Sébilla (Jébilla). Elle suivra ensuite le thwaleg de la branche occidentale de cette rivière en remontant son cours jusqu'à son intersection avec le parallèle de latitude passant par le village de Sapeliga. De ce point, la frontière suivra la limite septentrionale du terrain appartenant à Sapeliga jusqu'à la rivière Nouhan (Nuhan) et se dirigera ensuite par le thalweg de cette rivière en remontant ou en descendant suivant le cas, jusqu'à un point situé à 3,219 mètres (2 milles) à l'Est du chemin allant de Gambaga à Tingourskou (Tenkrugu) par Baukou (Bacwu). De là elle rejoindra en ligne droite le point d'intersection du 11e degré de latitude nord avec le chemin indiqué sur la carte n° 1 comme allant de Sansanné-Mango à Pama par Djebiga (Jebigu).

ART. 2.

La frontière entre la Colonie française du Dahomey et la Colonie britannique de Lagos qui a été délimitée sur le terrain par la Commission franco-anglaise de délimitation de 1895, et qui est décrite dans le rapport signé le 12 octobre 1896, par les Commissaires des deux nations, sera désormais reconnue comme la frontière séparant les possessions françaises et britanniques de la mer au 9e degré de latitude Nord.

A partir du point d'intersection de la rivière Ocpara avec le 9e degré de latitude Nord, tel qu'il a été déterminé par lesdits commissaires, la frontière séparant les possessions françaises et britanniques se dirigera vers le Nord et suivra une ligne passant à l'ouest des terrains appartenant aux localités suivantes : Tabira, Okouta (Okuta), Boria, Téré, Gbani, Yassikera (Ashigere) et Dekala.

De l'extrémité Ouest du terrain appartenant à Dekala, la frontière sera tracée dans la direction du Nord de manière à coïncider autant que possible avec la ligne indiquée sur la carte n° 1 annexée au présent protocole et atteindra la rive droite du Niger en un point situé à 16,093 mètres (10 milles) en amont du centre de la ville de Guiris (Géré, port d'Ilo) mesurés à vol d'oiseau.

ART. 3.

Du point spécifié dans l'article 2 où la frontière séparant les possessions françaises et britanniques atteint le Niger, c'est-à-dire d'un point situé sur la rive droite de ce fleuve à 16,093 mètres (10 milles) en amont du centre de la ville de Guiris (Géré) (port d'Ilo), la frontière suivra la perpendiculaire élevée de ce point sur la rive droite du fleuve jusqu'à son intersection avec la ligne médiane du fleuve. Elle suivra ensuite, en remontant la ligne médiane du fleuve jusqu'à son intersection avec une ligne perpendiculaire à la rive gauche et partant de la ligne médiane du débouché de la dépression ou cours d'eau asséché qui, sur la carte n° 2 annexée au présent Protocole, est appelée Dallul Mauri et y est indiqué comme étant situé à une distance d'environ 27,359 mètres (17 milles) mesurés à vol d'oiseau d'un point sur la rive gauche en face du village ci-dessus mentionné de Guiris (Géré).

De ce point d'intersection, la frontière suivra cette perpendiculaire jusqu'à sa rencontre avec la rive gauche du fleuve.

ART. 4.

A l'est du Niger, la frontière séparant les possessions françaises et britanniques suivra la ligne indiquée sur la carte n° 2 annexée au présent Protocole.

Partant du point sur la rive gauche du Niger indiqué à l'article précédent, c'est-à-dire la ligne médiane du Dallul Mauri, la frontière suivra cette ligne médiane jusqu'à sa rencontre avec la circonférence d'un cercle décrit du centre de la ville de Sokoto avec un rayon de 160,932 mètres (100 milles). De ce point elle suivra l'arc septentrional de ce cercle jusqu'à sa seconde intersection avec le 14° degré de latitude Nord. De ce second point d'intersection, elle suivra ce parallèle vers l'Est sur une distance de 112,652 mètres (70 milles), puis se dirigera au sud vrai jusqu'à sa rencontre avec le parallèle 13° 28′ de latitude Nord, puis vers l'Est suivant ce parallèle sur une distance de 402,230 mètres (250 milles), puis au Nord vrai jusqu'à ce qu'elle rejoigne le 14° parallèle de latitude Nord, puis vers l'Est sur ce parallèle jusqu'à son intersection avec le méridien passant à 35′ Est du centre de la ville de Kuka, puis ce méridien vers le Sud jusqu'à son intersection avec la rive sud du lac Tchad.

Le Gouvernement de la République française reconnait comme tombant dans la sphère britannique le territoire à l'est du Niger compris entre la ligne susmentionnée, la frontière anglo-allemande et la mer.

Le Gouvernement de Sa Majesté britannique reconnait comme tombant dans la sphère française les rives nord, est et sud du lac Tchad qui sont comprises entre le point d'intersection du 14° degré de latitude nord avec la rive occidentale du lac et le point d'incidence sur le lac de la frontière déterminée par la convention franco-allemande du 15 mars 1894.

ART. 5.

Les frontières déterminées par le présent Protocole sont inscrites sur les cartes numéros 1 et 2 ci-annexées.

Les deux Gouvernements s'engagent à désigner dans le délai d'un an pour les frontières de l'ouest du Niger et de deux ans pour les frontières à l'est de ce même fleuve, à compter de la date de l'échange des ratifications de la Convention qui doit être conclue aux fins de confirmer le présent Protocole, des commissaires qui seront chargés d'établir sur les lignes de démarcation entre les possessions françaises et britanniques en conformité et suivant l'esprit des stipulations du présent Protocole.

En ce qui concerne la délimitation de la portion du Niger dans les environs d'Ilo et du Dallul-Mauri visée à l'article 3, les commissaires chargés de la délimitation, en déterminant sur les lieux la frontière fluviale, répartiront équitablement entre les deux Puissances contractantes les îles qui pourront faire obstacle à la délimitation fluviale telle qu'elle est décrite à l'article 3.

Il est entendu entre les deux Puissances contractantes qu'aucun changement ultérieur dans la position de la ligne médiane du fleuve n'affectera les droits de propriété sur les îles qui auront été attribuées à chacune des deux Puissances par le procès-verbal des commissaires dûment approuvé par les deux Gouvernements.

ART. 6.

Les deux Puissances contractantes s'engagent réciproquement à traiter avec bienveillance (*considération*) les chefs indigènes qui ayant eu des traités avec l'une d'elles se trouveront en vertu du présent Protocole passer sous la souveraineté de l'autre.

ART. 7.

Chacune des deux Puissances contractantes s'engage à n'exercer aucune action politique dans les sphères de l'autre telles qu'elles sont définies par les articles 1, 2, 3 et 4 du présent Protocole. Il est convenu par là que chacune des deux Puissances s'interdit de faire des acquisitions territoriales dans les sphères de l'autre, d'y conclure des traités, d'y accepter des droits de souveraineté ou de protectorat, d'y gêner ou d'y contester l'influence de l'autre.

ART. 8.

Le Gouvernement de sa Majesté Britannique cédera à bail au Gouvernement de la République française, aux fins et conditions spécifiées dans le modèle du bail annexé au présent Protocole, deux terrains à choisir par le Gouvernement de la République française de concert avec le Gouvernement de Sa Majesté Britannique, dont l'un sera situé en un endroit convenable sur la rive droite du Niger entre Léaba et le confluent de la rivière Moussa (Mochi) avec ce fleuve et l'autre sur l'une des embouchures du Niger.

Chacun de ces terrains sera en bordure sur le fleuve sur une étendue de 400 mètres au plus et formera un tènement dont la superficie ne sera pas inférieure à 10 hectares, ni supérieure à 50 hectares. Les limites exactes de ces terrains seront indiquées sur un plan annexé à chacun des baux.

Les conditions dans lesquelles s'effectuera le transit des marchandises sur le cours du Niger, de ses affluents, de ses embranchements et issues, ainsi que le terrain ci-dessus mentionné situé entre Léaba et le confluent de la rivière Moussa (Mochi) et le point à désigner par le Gouvernement de la République française sur la frontière française feront l'objet d'un règlement dont les détails seront discutés par les deux Gouvernements immédiatement après la signature du présent Protocole.

Le Gouvernement de Sa Majesté Britannique s'engage à donner avis quatre mois à l'avance au Gouvernement de la République française de toute modification dans le règlement en question, afin de mettre ledit Gouvernement français en mesure d'exposer au Gouvernement Britannique toutes représentations qu'il pourrait désirer faire.

Art. 9.

A l'intérieur des limites tracées sur la carte n° 2 annexée au présent protocole les citoyens français et protégés français, les sujets britanniques et citoyens britanniques pour leurs personnes comme pour leurs biens, les marchandises et produits naturels ou manufacturés de la France et de la Grande-Bretagne, de leurs Colonies, possessions et protectorats respectifs jouiront pendant 30 années à partir de l'échange des ratifications de la Convention mentionnée à l'article 5, du même traitement pour tout ce qui concerne la navigation fluviale, le commerce, le régime douanier et fiscal et les taxes de toute nature.

Sous cette réserve, chacune des deux Puissances contractantes conservera la liberté de régler sur son territoire et à sa convenance le régime douanier et fiscal et les taxes de toute nature.

Dans le cas où aucune des Puissances contractantes n'aurait notifié douze mois avant l'échéance du terme précité de trente années son intention de faire cesser les effets du présent article, il continuera à être obligatoire jusqu'à l'expiration d'une année à partir du jour où l'une ou l'autre des Puissances contractantes l'aura dénoncé.

En foi de quoi les délégués soussignés ont dressé le présent Protocole et y ont apposé leurs signatures.

Fait à Paris en double expédition le quatorze juin mil huit cent quatre-vingt-dix-huit.

Signé : René Lecomte.

G. Binger.

Martin Gosselin.

William Everett.

ANNEXE.

Bien que le tracé des lignes de démarcation sur les deux cartes annexées au présent Protocole soit supposé être généralement exact, il ne peut être considéré comme une représentation absolument correcte de ces lignes jusqu'à ce qu'il ait été confirmé par de nouveaux levés.

Il est donc convenu que les Commissaires ou délégués locaux des deux pays qui seront chargés par la suite de délimiter tout ou partie des frontières sur le terrain devront se baser sur la description des frontières telle qu'elle est formulée dans le Protocole. Il leur sera loisible en même temps de modifier lesdites lignes de démarcation en vue de les déterminer avec une plus grande exactitude et de rectifier la position des lignes de partage, des chemins ou rivières ainsi que des villes ou villages indiqués dans les cartes susmentionnées.

Les changements ou corrections proposés d'un commun accord par lesdits commissaires ou délégués seront soumis à l'approbation des Gouvernement respectifs.

Signé : René Lecomte.
G. Binger.
Martin Gosselin.
William Everett.

ANNEXE.

MODÈLE DE BAIL.

1° Le Gouvernement de Sa Majeté Britannique cède à bail au Gouvernement de la République française un terrain situé.................. du Niger, ayant en bordure du fleuve un développement de..................... et formant un tènement d'une superficie de..... hectares, dont les limites exactes sont indiquées sur le plan annexé au présent bail;

2° Le bail aura une durée de trente années consécutives, à partir de........., mais dans le cas où aucune des parties contractantes n'aura notifié douze mois avant l'échéance du terme susmentionné de trente ans, son intention de mettre fin au présent bail, ledit bail restera en vigueur jusqu'à l'expiration d'une année à partir du jour où l'une ou l'autre des parties contractantes l'aura dénoncé;

3° Ledit terrain sera soumis aux lois en vigueur pendant cette période dans le Protectorat britannique des districts du Niger;

4° Une partie du territoire ainsi cédé à bail et dont l'étendue n'excédera pas 10 hectares sera utilisée exclusivement pour les opérations de débarquement, d'emmagasinage et de transbordement des marchandises et pour toutes fins pouvant être considérées comme subsidiaires à ces opérations et les seuls résidents permanents seront les personnes employées pour le service et la sécurité desdites marchandises avec leurs familles et leurs domestiques;

5° Le Gouvernement de la République française s'engage :

a) A clore la partie dudit terrain mentionné à l'article 4 du présent bail (à l'exception du côté bordant le Niger) par un mur ou par une palissade ou par toute autre sorte de clôture continue dont la hauteur ne sera pas inférieure à 3 mètres, il n'y aura qu'une seule porte sur chacun des trois côtés de la clôture.

b) A ne pas permettre dans ladite partie de terrain la réception ou la sortie d'aucune marchandise en contravention avec les règlements douaniers britanniques. Tout acte fait en violation de cette stipulation sera considéré comme équivalant à une fraude de droit de douanes et sera puni en conséquence.

c) A ne pas vendre ni autoriser à vendre des marchandises au détail sur ladite partie de terrain. La vente de quantité d'un poids ou d'une mesure inférieure à 1,000 kilogrammes, 1,000 litres ou 1,000 mètres sera considérée comme vente au détail. Il est entendu que cette stipulation n'est pas applicable aux marchandises en transit.

d) Le Gouvernement de la République française ou ses sous-locataires ou agents auront le droit de construire sur ladite portion de terrain, des magasins, des maisons, pour bureaux et tous autres édifices nécessaires pour les opérations de débarquement, d'emmagasinement et de transbordement des marchandises, et également de construire, dans la partie de l'avant rivage du Niger, comprise dans le bail des quais, des ponts, des docks et tous autres ouvrages nécessaires en vue desdites opérations, pourvu que les plans de tout ouvrage à construire ainsi sur l'avant rivage du fleuve soient communiqués pour examen aux autorités britanniques, afin que vérification puisse être faite, que ces ouvrages ne sauraient, en aucune manière, gêner la navigation du fleuve ni être en opposition avec les droits de tiers ou avec le système douanier.

e) Il est entendu que l'embarquement, le débarquement et l'emmagasinement des marchandises sur ladite partie de terrain seront effectués, à tous égards, conformément aux lois alors en vigueur dans le protectorat britannique des districts du Niger.

6. Le Gouvernement de la République française s'engage à payer annuellement au Gouvernement britannique, le 1er janvier de chaque année, un loyer d'un franc.

7. Le Gouvernement de la République française aura le droit de sous-louer tout ou partie de terrain faisant l'objet du présent bail, pourvu que les sous-locataires ne fassent usage de ce terrain à d'autres fins que celle stipulée dans le présent bail, et que ledit Gouvernement demeure responsable envers le Gouvernement de Sa Majesté britannique de l'observation des stipulations du présent bail.

8. Le Gouvernement de Sa Majesté britannique s'engage à remplir, à l'égard du preneur à bail, toutes les obligations qui lui incombent en sa qualité du propriétaire dudit terrain.

9. A l'expiration du terme de trente ans spécifié à l'article 2 du présent bail, le Gouvernement français ou ses sous-locataires pourront rester pour une période qui, cumulée avec ledit terme de trente ans, n'excédera pas quatre-vingt-dix-neuf ans en possession et jouissance des constructions et installations qui auront été faites sur le terrain cédé à bail. Toutefois, le Gouvernement de Sa Majesté britannique se réservera, à l'expiration ou à la mise à terme du présent bail survenu dans les conditions spécifiées à l'article 2, le droit de racheter, à dire d'experts qui seront nommés par les deux Gouvernements, lesdites constructions et installations moyennant que notification de son intention soit donnée au Gouvernement français au plus tard dix mois avant l'expiration ou mise à terme du bail. En cas de dissentiment entre eux, les experts désigneront un tiers arbitre dont la décision sera définitive.

Pour calculer la valeur des constructions et installations ci-dessus mentionnées, les experts se guideront d'après les considérations suivantes :

a) Dans les cas où le bail expirerait à la fin des trente premières années la valeur de rachat des biens sera la pleine valeur marchande;

b) Dans le cas où le bail cesserait postérieurement au bail de trente ans, la valeur à payer sera la pleine valeur marchande, moins une fraction dont le numérateur sera le nombre d'années qu'aura duré le bail diminué de trente et dont le dénominateur sera soixante-neuf.

10. Le terrain compris dans le bail sera arpenté et délimité sans retard.

11. Dans le cas où une différence d'opinion surgirait entre les deux Gouvernements sur l'interprétation du bail ou sur tout autre sujet se rapportant à ce bail, la question sera réglée par l'arbitrage d'un jurisconsulte d'une nationalité tierce désigné d'accord par les deux Gouvernements.

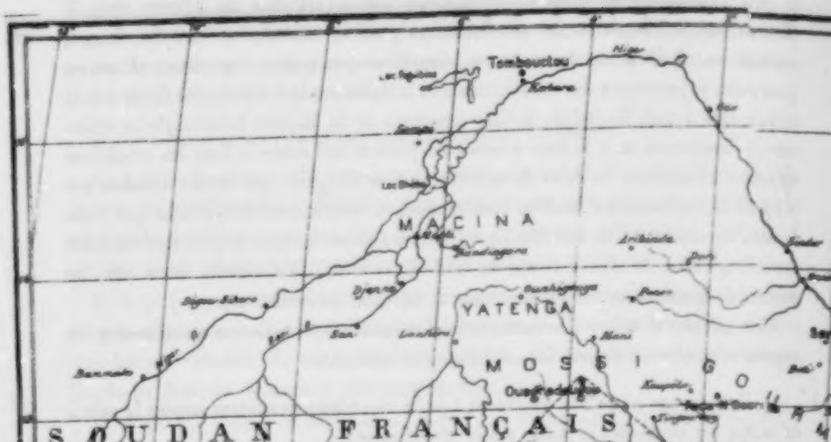
Signé : René LECOMTE.
Signé : G. BINGER.
Signé : Martin GOSSELIN.
Signé : William EVERETT.

La présente Convention sera ratifiée et les ratifications en seront échangées à Paris dans le délai de six mois ou plus tôt si faire se peut.

En foi de quoi les soussignés ont signé la présente convention et y ont apposé leurs cachets.

Fait à Paris, en double exemplaire, le 14 juin 1898.

(*L. S.*) Signé : Edmund MONSON.
(*L. S.*) Signé : G. HANOTAUX.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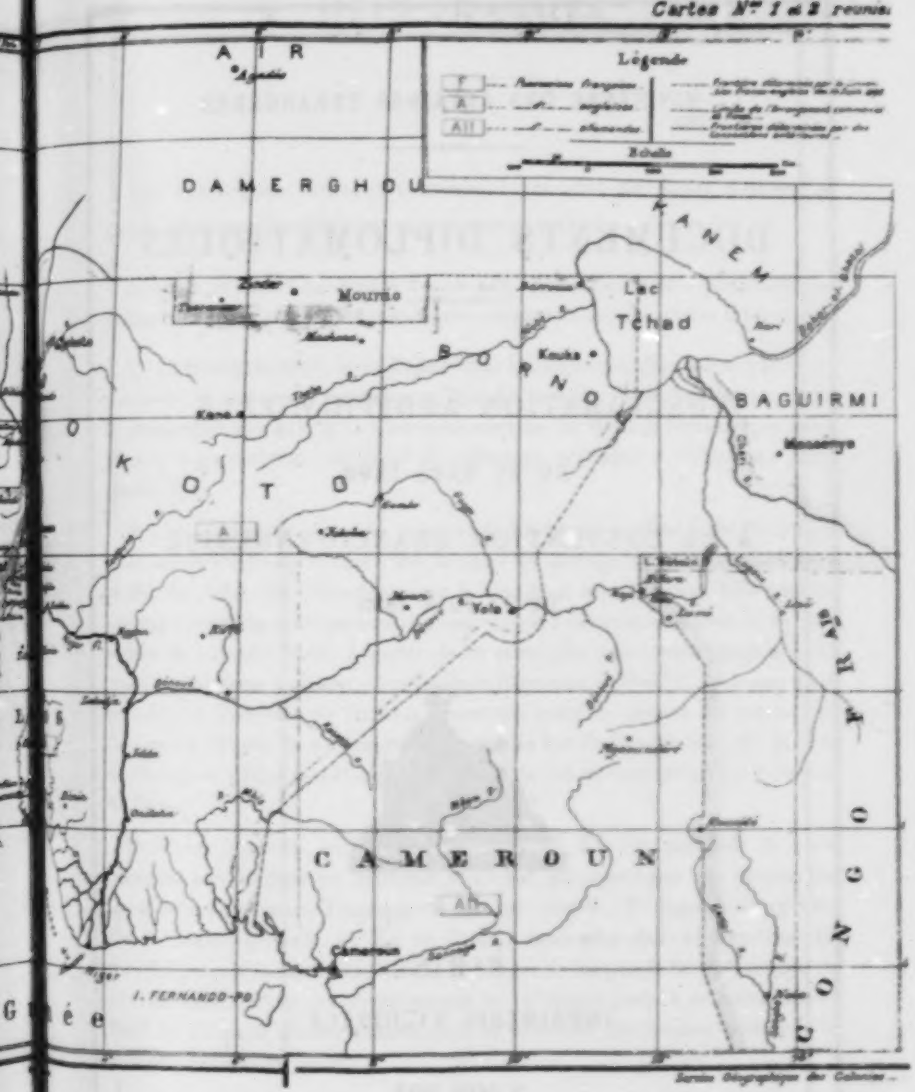
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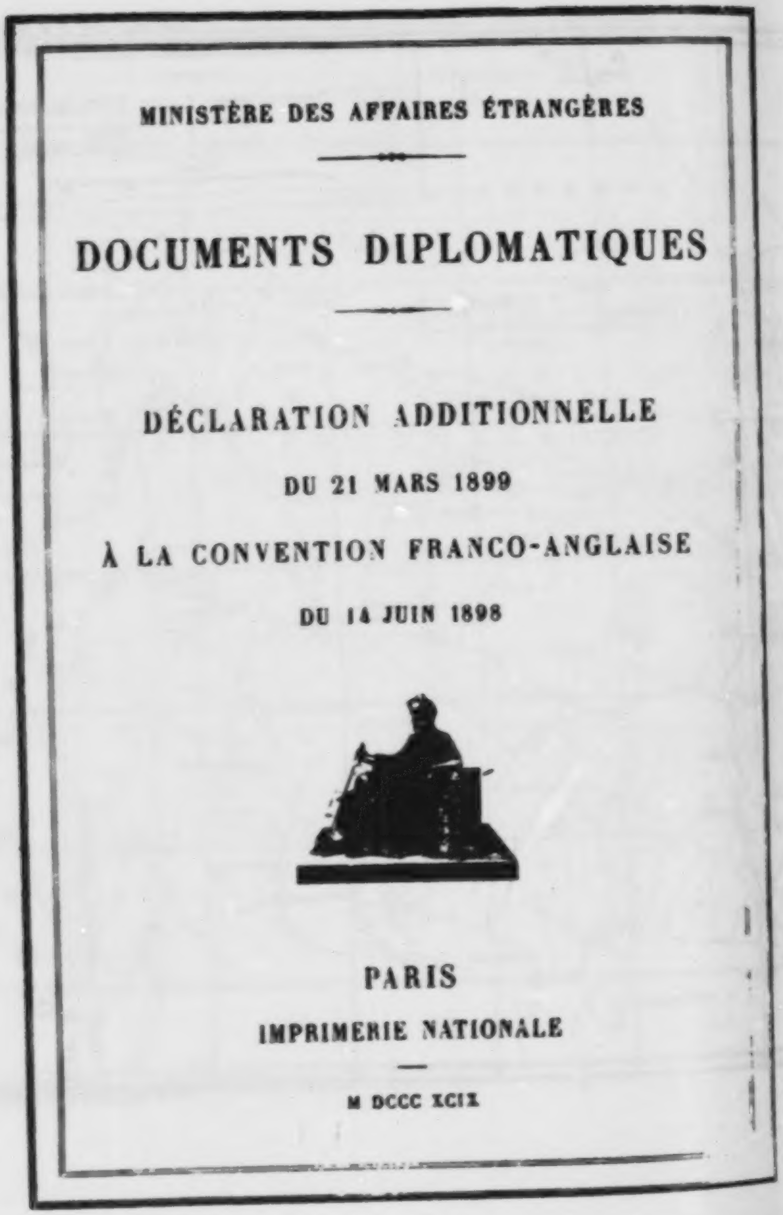


MINISTÈRE DES AFFAIRES ÉTRANGÈRES

DOCUMENTS DIPLOMATIQUES

DÉCLARATION ADDITIONNELLE
DU 21 MARS 1899
À LA CONVENTION FRANCO-ANGLAISE
DU 14 JUIN 1898

PARIS
IMPRIMERIE NATIONALE

M DCCC XCIX

DÉCLARATION.

Les Soussignés, dûment autorisés à cet effet par leurs Gouvernements, ont signé la Déclaration suivante : —

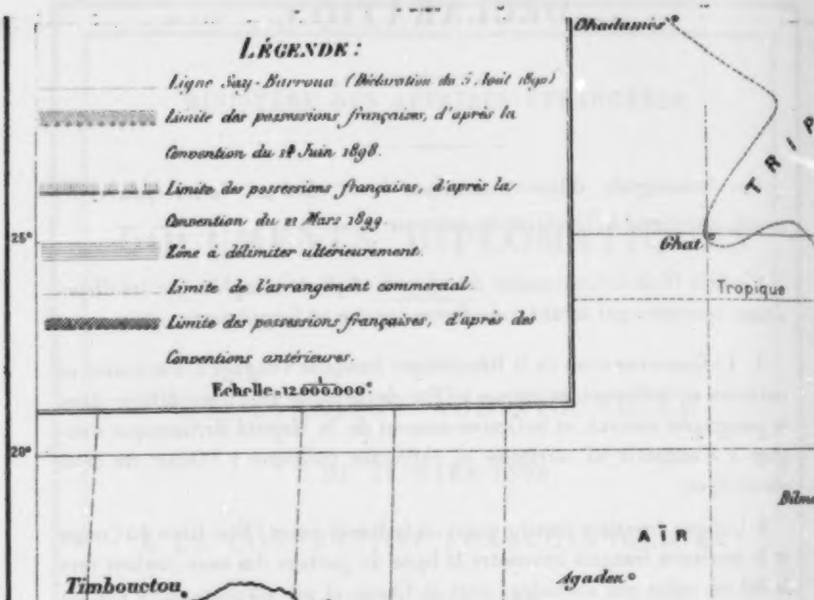
L'article IV de la Convention du 14 juin 1898 est complété par les dispositions suivantes qui seront considérées comme en faisant partie intégrante :

1. Le Gouvernement de la République française s'engage à n'acquérir ni territoire ni influence politique à l'Est de la ligne frontière définie dans le paragraphe suivant, et le Gouvernement de Sa Majesté Britannique s'engage à n'acquérir ni territoire ni influence politique à l'Ouest de cette même ligne.

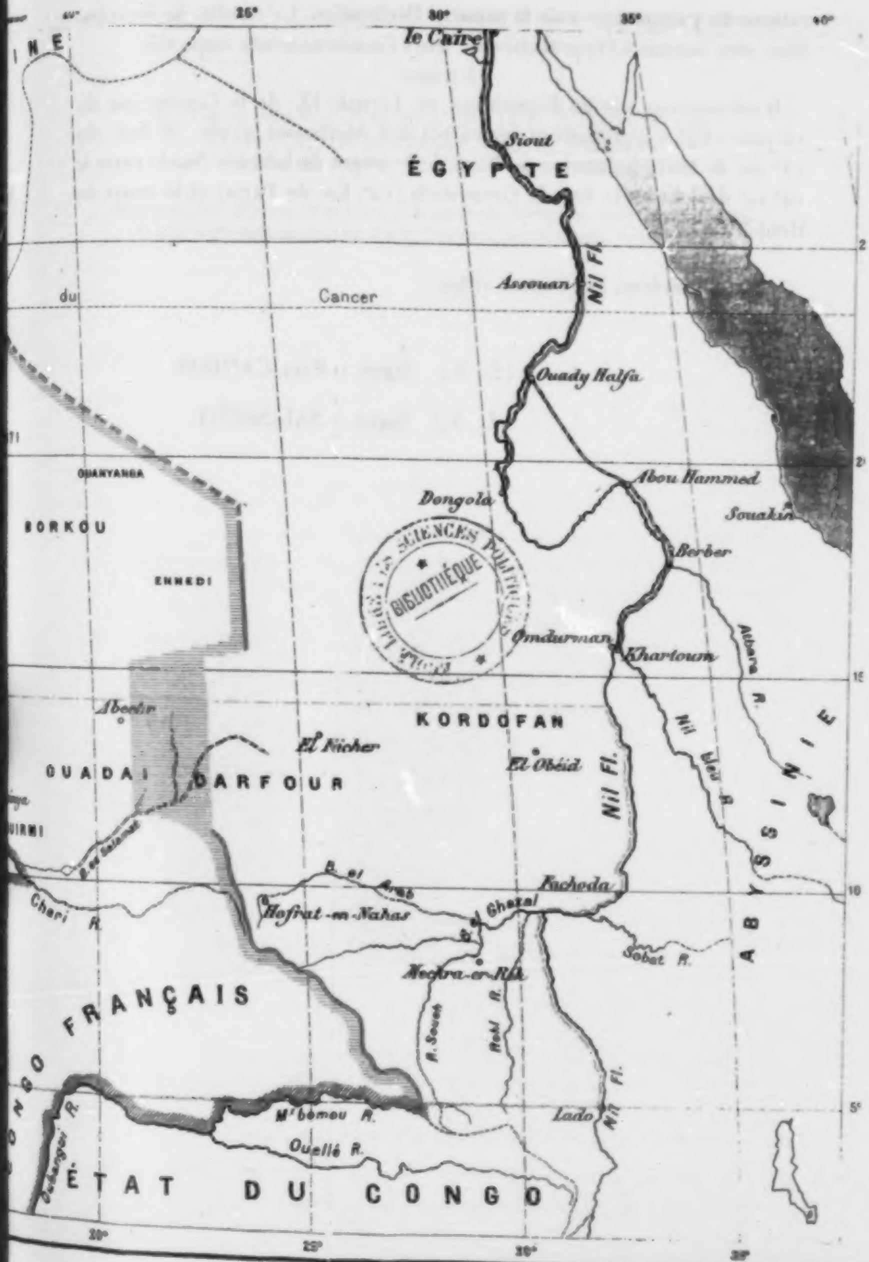
2. La ligne frontière part du point où la limite entre l'État libre du Congo et le territoire français rencontre la ligne de partage des eaux coulant vers le Nil de celles qui s'écoulent vers le Congo et ses affluents. Elle suit en principe cette ligne de partage des eaux jusqu'à sa rencontre avec le 11e parallèle de latitude Nord. A partir de ce point elle sera tracée jusqu'au 15e parallèle de façon à séparer en principe le Royaume de Ouadaï de ce qui était en 1882 la Province de Darfour; mais son tracé ne pourra en aucun cas dépasser à l'Ouest le 21e degré de longitude Est de Greenwich (18° 40′ Est de Paris), ni à l'Est le 23e degré de longitude Est de Greenwich (20° 40′ Est de Paris).

3. Il est entendu, en principe qu'au Nord du 15e parallèle la zone française sera limitée au Nord-Est et à l'Est par une ligne qui partira du point de rencontre du Tropique du Cancer avec le 16e degré de longitude Est de Greenwich (13° 40′ Est de Paris), descendra dans la direction du Sud-Est jusqu'à sa rencontre avec le 24e degré de longitude Est de Greenwich (21° 40′ Est de Paris) et suivra ensuite le 24e degré jusqu'à sa rencontre au Nord du 15e parallèle de latitude avec la frontière du Darfour telle qu'elle sera ultérieurement fixée.

4. Les deux Gouvernements s'engagent à désigner des Commissaires qui seront chargés d'établir sur les lieux une ligne frontière conforme aux indi-



Gravé et imp. par Erhard Fres, 35bis, Rue Denfert-Rochereau, Paris.



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L. Brebaisson del.

cations du paragraphe 2 de la présente Déclaration. Le résultat de leurs travaux sera soumis à l'approbation de leurs Gouvernements respectifs.

Il est convenu que les dispositions de l'article IX de la Convention du 14 juin 1898 s'appliqueront également aux territoires situés au Sud du 14° 20′ de latitude Nord et au Nord du 5° degré de latitude Nord, entre le 14° 20′ de longitude Est de Greenwich (12° Est de Paris) et le cours du Haut-Nil.

Fait à Londres, le 21 mars 1899.

(*L. S.*) Signé : Paul CAMBON.

(*L. S.*) Signé : SALISBURY.

Annex 5

ACCORDS FRANCO-ITALIENS DES 14-16 DÉCEMBRE 1900: ÉCHANGES DE LETTRES ENTRE M. BARRÈRE ET M. LE MARQUIS VISCONTI VENOSTA

Ministère des affaires étrangères, *Les accords franco-italiens de 1900-1902*, Documents diplomatiques, Paris, Imprimerie nationale, 1920, pp. 3-4.

ANNEXE I.

M. BARRÈRE, Ambassadeur de la République française à Rome,

à S. E. M. le Marquis VISCONTI VENOSTA, Ministre des Affaires étrangères d'Italie.

Rome, 14 décembre 1900.

A la suite de la conclusion entre la France et la Grande-Bretagne de la Convention du 21 mars 1899 (1), mon Gouvernement, répondant à votre honorable prédécesseur, eut l'occasion de lui donner, par mon intermédiaire, des éclaircissements de nature à dissiper toute équivoque sur la portée de cet instrument.

Depuis, Votre Excellence a exprimé l'avis que ces assurances, réitérées d'une manière plus explicite, contribueraient à affermir les bons rapports entre nos deux pays.

J'ai été en conséquence, autorisé par le Ministre des Affaires étrangères à faire connaître à Votre Excellence, en raison des relations amicales qui ont été établies entre la France et l'Italie, et dans la pensée que cette explication conduira à les améliorer encore, que la Convention du 21 mars 1899, en laissant en dehors du partage d'influence qu'elle sanctionne le vilayet de Tripoli, marque pour la sphère d'influence française, par rapport à la Tripolitaine Cyrénaïque, une limite que le Gouvernement de la République n'a pas l'intention de dépasser et qu'il n'entre pas dans ses projets d'intercepter les communications caravanières de Tripoli avec les régions visées par la susdite convention.

Ces explications, que nous sommes convenus de tenir secrètes, contribueront, je n'en doute pas, à consolider, sur ce point comme sur d'autres, les relations amicales entre nos deux pays.

BARRÈRE.

ANNEXE II.

M. le Marquis VISCONTI VENOSTA, Ministre des Affaires étrangères d'Italie,

à M. BARRÈRE, Ambassadeur de la République française à Rome.

Rome, le 16 décembre 1900.

La situation actuelle dans la Méditerranée et les éventualités qui s'y pourraient produire ont formé entre nous l'objet d'un échange amical d'idées, nos deux gouvernements étant également animés du désir d'écarter, à cet égard aussi, tout ce qui serait susceptible de compromettre, dans le présent et dans l'avenir, la bonne entente mutuelle.

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(1) Cette Convention a fait l'objet d'un Livre Jaune publié en 1899.

En ce qui concerne plus particulièrement le Maroc, il est ressorti de nos entretiens que l'action de la France a pour but d'exercer et de sauvegarder les droits qui résultent pour elle du voisinage de son territoire avec cet Empire.

Ainsi définie, j'ai reconnu qu'une pareille action n'est pas à nos yeux de nature à porter atteinte aux intérêts de l'Italie comme puissance méditerranéenne.

Il a été entendu également que, s'il en devait résulter une modification de l'état politique ou territorial du Maroc, l'Italie se réserverait, par mesure de réciprocité, le droit de développer éventuellement son influence par rapport à la Tripolitaine Cyrénaïque.

Ces explications, que nous sommes convenus de tenir secrètes, contribueront, je n'en doute pas, à consolider les relations amicales entre nos deux pays.

VISCONTI VENOSTA.

Annex 6

ANGLO-ITALIAN ACCORD OF 11-12 MARCH 1902

Note verbale from the British Ambassador in Rome, Currie,
to the Italian Minister of Foreign Affairs, Prinetti, 11 March 1902,
in Ministerio Affari Esteri, *Documenti Diplomatici Italiani*,
Terza Serie: 1896-1906, Vol. VI,
Instituto Poligrafico dello Stato, 1985. Italian text. Translation.

Documents in the exchange constituting the Accord
from the British Foreign Office files.

Dispatch No. 36, 7 March 1902, Lansdowne-Currie (FO 170/587),
Dispatch No. 37, 15 March 1902, Currie-Lansdowne,
Inclosure 1 in No. 1 (Currie-Prinetti, 11 March 1902,
setting out British Declaration) (FO 170/587).
Ibid., Inclosure 2 in No. 1 (Barrère-Visconti-Venosta,
14 December 1900).

233.

IL MINISTRO DEGLI ESTERI, PRINETTI, ALL'AMBASCIATORE A LONDRA, PANSA

T. RR. S.N. *Roma, 12 marzo 1902.*

L'ambasciatore d'Inghilterra mi ha ora rimesso una nota contenente, circa Tripoli, dichiarazioni perfettamente conformi al nostro desiderio. Ne avverto, ad ogni buon fine, V. E., riservandomi di inviare col prossimo corriere copia della nota con incarico di manifestare a lord Lansdowne il nostro compiacimento e pieno consenso.

234.

IL MINISTRO DEGLI ESTERI, PRINETTI, ALL'AMBASCIATORE A LONDRA, PANSA

D. CONFIDENZIALE S.N. *Roma, 12 marzo 1902.*

Lo scambio di idee che, come a V. E. è noto mercè il nostro confidenziale carteggio, io ebbi con questo Signor Ambasciatore d'Inghilterra, dopo la spontanea offerta di codesto Governo di rivolgerci una amichevole sua dichiarazione circa Tripoli, è giunto a propizia conclusione, avendomi Lord Currie rimesso la Nota, in data di ieri, di cui qui acchiudo una copia.

Il R. Governo è grato al Governo di S. M. Britannica dell'avere con le precise enunciazioni contenute nella unita nota, chiarito in modo non dubbio le sue intenzioni ed i suoi propositi circa lo stato presente e le eventuali future contingenze in quella regione. Prego V. E. di volerne porgere al Principale Segretario di Sua Maestà per gli affari esteri i nostri più vivi ringraziamenti, assicurandolo, in pari tempo, che, rispetto all'intero contenuto della Nota il R. Governo si dichiara conscio e consenziente.

V. E. è autorizzata a rilasciare a Sua Maestà copia del presente mio dispaccio, se tale è il suo desiderio.

ALLEGATO.

CURRIE A PRINETTI

NOTA VERBALE. *Roma, 11 marzo 1902.*

The undersigned Ambassador Extraordinary and Minister Plenipotentiary of His Britannic Majesty is authorized to declare on behalf of His Majesty's Government that the agreement between Great Britain and France of the 21.th March 1899, laid down a line, to the East and West of which, respectively, the two signatory powers bound themselves not to acquire territory or political influence in the regions traversed by the said line, but that the agreement in no way purported to deal with the rights of other Powers, and that in particular, as regards the Vilayet of Tripoli and the Mutessariflik of Benghasi all such rights remain entirely unaffected by it.

The undersigned is further authorized to give an assurance that His Britannic Majesty's Government have no aggressive or ambitious designs in regard to Tripoli as above described; that they continue to be sincerely desirous of the maintenance of the status quo there, as in other parts of the coast of the Mediterranean and that if at any time an alteration of the status quo should take place, it would be their object that,

so far as is compatible with the obligations resulting from the public law of Europe, such alteration should be in conformity with Italian interests.

This assurance is given on the understanding and in full confidence that Italy on her part has not entered, and will not enter into arrangements with other Powers in regard to this or other portions of the coast of the Mediterranean of a nature inimical to British interests (1).

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(1) Nel documento conservato dal «Foreign Office» (101/94 e 170/393 D. n. 39) esiste una differenza, laddove nel testo sopracitato si dice «... so far as it is compatible with obligations resulting from the public law of Europe», in quello del «Foreign Office» si legge: «... so far as it is compatible with the obligations resulting from the Treaties which at present form part of the public law of Europe». Cfr. E. Serra, *L'Intesa mediterranea del 1902*, cit., pp. 180 e ss. Il testo dell'accordo non è stato pubblicato nei BD.

TRANSLATION

233

THE MINISTER OF FOREIGN AFFAIRS, PRINETTI
TO THE AMBASSADOR IN LONDON, PANSA

T. RR/S.N. Rome, 12 March 1902

The British Ambassador today gave me a note containing statements concerning Tripoli entirely in line with our wishes. I would like to inform Your Excellency in any event and I shall send a copy of the note with the next courier so Lord Landsdowne can be notified of our approval and full consent.

234

THE MINISTER OF FOREIGN AFFAIRS, PRINETTI
TO THE AMBASSADOR IN LONDON, PANSA

D. CONFIDENTIAL S.N. Rome, 12 March 1902

The exchange of ideas which, as Your Excellency is aware, thanks to the confidential exchange of letters, between myself and the British Ambassador following the spontaneous offer of the British Government to provide us with its friendly declaration on Tripoli has come to a fruitful conclusion, Lord Currie having given me his Note of yersterday's date a copy of which is enclosed.

The Italian Government is grateful to the Government of His Britannic Majesty for unambiguously clarifying, with the clear statements contained in the note here attached, its intentions and its proposals concerning the present state and possible future contingencies in that region. I ask Your Excellency kindly to communicate to the Principal Secretary of His Majesty for Foreign Affairs our most cordial thanks, assuring him at the same time that Italian Government is conscious and appreciative of the entire contents of the said Note.

Your Excellency is authorized to give His Majesty a copy of my present dispatch, if that is his wish.

(English text)

...

(1)

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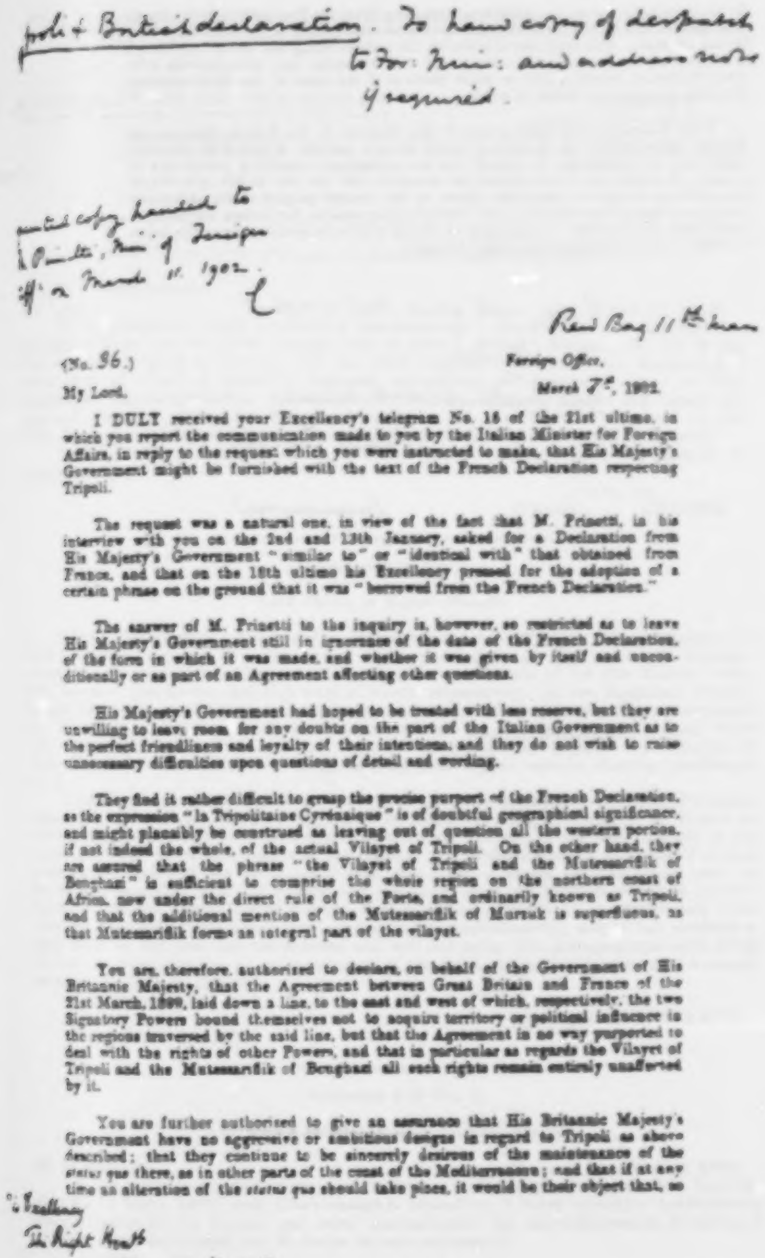
(1) There is a divergence from the document kept at the Foreign Office (101/94 and 170/595 D.n. 39), where the above text states "So far as it is compatible with obligations resulting from the public law of Europe", while that of the "Foreign Office" reads, "... so far as it compatible with the obligations resulting from the Treaties which at present form part of the public law of Europe". cf. E. Serra, L'Intesa Mediterranea del 1902, op. cit., pp.180 et seq. the text of the agreement has not been published in the BD.



poli + British declaration. To hand copy of despatch to For: Min: and address note if required.

ential copy handed to
Prinetti, Min: of Foreign
Aff: on March 11. 1902.

Recd Bag 11th Mar

(No. 96.)

Foreign Office,
March 7th, 1902.

My Lord,

I DULY received your Excellency's telegram No. 18 of the 21st ultimo, in which you report the communication made to you by the Italian Minister for Foreign Affairs, in reply to the request which you were instructed to make, that His Majesty's Government might be furnished with the text of the French Declaration respecting Tripoli.

The request was a natural one, in view of the fact that M. Prinetti, in his interview with you on the 2nd and 13th January, asked for a Declaration from His Majesty's Government "similar to" or "identical with" that obtained from France, and that on the 18th ultimo his Excellency pressed for the adoption of a certain phrase on the ground that it was "borrowed from the French Declaration."

The answer of M. Prinetti to the inquiry is, however, so restricted as to leave His Majesty's Government still in ignorance of the date of the French Declaration, of the form in which it was made, and whether it was given by itself and unconditionally or as part of an Agreement affecting other questions.

His Majesty's Government had hoped to be treated with less reserve, but they are unwilling to leave room for any doubts on the part of the Italian Government as to the perfect friendliness and loyalty of their intentions, and they do not wish to raise unnecessary difficulties upon questions of detail and wording.

They find it rather difficult to grasp the precise purport of the French Declaration, as the expression "la Tripolitaine Cyrénaique" is of doubtful geographical significance, and might plausibly be construed as leaving out of question all the western portion, if not indeed the whole, of the actual Vilayet of Tripoli. On the other hand, they are assured that the phrase "the Vilayet of Tripoli and the Mutessarifik of Benghazi" is sufficient to comprise the whole region on the northern coast of Africa, now under the direct rule of the Porte, and ordinarily known as Tripoli, and that the additional mention of the Mutessarifik of Murzuk is superfluous, as that Mutessarifik forms an integral part of the vilayet.

You are, therefore, authorised to declare, on behalf of the Government of His Britannic Majesty, that the Agreement between Great Britain and France of the 21st March, 1899, laid down a line, to the east and west of which, respectively, the two Signatory Powers bound themselves not to acquire territory or political influence in the regions traversed by the said line, but that the Agreement in no way purported to deal with the rights of other Powers, and that in particular as regards the Vilayet of Tripoli and the Mutessarifik of Benghazi all such rights remain entirely unaffected by it.

You are further authorised to give an assurance that His Britannic Majesty's Government have no aggressive or ambitious designs in regard to Tripoli as above described; that they continue to be sincerely desirous of the maintenance of the *status quo* there, as in other parts of the coast of the Mediterranean; and that if at any time an alteration of the *status quo* should take place, it would be their object that, so

's Excellency
The Right Honble
Lord Currie G.C.B.
[illegible] &c. &c. &c.

far as is compatible with the obligations resulting from the Treaties which at present form part of the public law of Europe, such alteration should be in conformity with Italian interests. This assurance is given on the understanding and in full confidence that Italy on her part has not entered, and will not enter, into arrangements with other Powers in regard to this or other portions of the coast of the Mediterranean of a nature inimical to British interests.

Your Excellency will hand a copy of this despatch to the Italian Minister for Foreign Affairs, and if his Excellency should deem it essential to have a more formal record, you are authorised to embody the two immediately preceding paragraphs in a note. It would not, in our opinion, be desirable that the text of the note should be published, though we should not object to the general purport of the assurances given by us being made known, if, for Parliamentary reasons, the Italian Government should find this necessary. In this case, we should wish to be consulted as to the terms in which such an announcement might be made.

I am, with great truth & respect,
My Lord,
Your Excellency's most obedient,
humble Servant,
Lansdowne

[This Document is the Property of His Britannic Majesty's Government.]

NORTH-EAST AFRICA AND SOUDAN. [March 22.]

CONFIDENTIAL. SECTION 2.

No. 1.

Lord Currie to the Marquess of Lansdowne.—(Received March 22.)

(No. 37. Confidential.)

My Lord, *Rome, March 15, 1902.*

IN obedience to your Lordship's instructions, I handed to the Minister for Foreign Affairs on the 11th instant copy of your Lordship's despatch No. 36 of the 7th instant in regard to Tripoli. On the 12th instant I left with his Excellency a note, copy of which is herewith inclosed, embodying paragraphs 6 and 7 of your Lordship's above-mentioned despatch. M. Prinetti then placed in my hands the original despatch from the French Ambassador to the Marquis Visconti of the 14th December, 1900, which contains the French Declaration in regard to Tripoli.

His Excellency allowed me to make a copy, which I have the honour to inclose.

I have, &c.
(Signed) CURRIE.

Inclosure 1 in No. 1.

Lord Currie to Signor Prinetti.

THE Undersigned, Ambassador Extraordinary and Minister Plenipotentiary of His Britannic Majesty, is authorised to declare, on behalf of His Majesty's Government, that the Agreement between Great Britain and France of the 21st March, 1899, laid down a line to the east and west of which respectively the two Signatory Powers bound themselves not to acquire territory or political influence in the regions traversed by the said line, but that the Agreement in no way purported to deal with the rights of other Powers, and that, in particular, as regards the Vilayet of Tripoli and the Mutessariflik of Benghazi, all such rights remain entirely unaffected by it.

The Undersigned is further authorised to give an assurance that His Britannic Majesty's Government have no aggressive or ambitious designs in regard to Tripoli as above described; that they continue to be sincerely desirous of the maintenance of the *status quo* there as in other parts of the coast of the Mediterranean; and that, if at any time an alteration of the *status quo* should take place, it would be their object that, so far as is compatible with the obligations resulting from the Treaties which at present form part of the public law of Europe, such alteration should be in conformity with Italian interests. This assurance is given on the understanding and in full confidence that Italy on her part has not entered and will not enter into arrangements with other Powers in regard to this or other portions of the coast of the Mediterranean of a nature inimical to British interests.

The Undersigned, &c.

(Signed) CURRIE.

Rome, March 11, 1902.

Inclosure 2 in No. 1.

M. Barrère to the Marquis Visconti-Venosta.

M. le Ministre, *Rome, le 14 Décembre, 1900.*

A LA suite de la conclusion entre la France et la Grande-Bretagne de la Convention du 21 Mars, 1899, mon Gouvernement répondant à votre honorable prédécesseur eut l'occasion de lui donner par mon intermédiaire des éclaircissements de nature à dissiper toute équivoque sur la portée de cet instrument.

Depuis lors votre Excellence a exprimé l'avis que ces assurances, réitérées d'une manière plus explicite, contribueraient à affermir les bons rapports entre nos deux pays.

J'ai été en conséquence autorisé par le Ministre des Affaires Étrangères de faire communication à votre Excellence, en raison des relations amicales qui ont été établies entre la France et l'Italie et dans la pensée que cette explication tendrait à les améliorer encore, que la Convention du 21 Mars, 1899, en laissant en dehors du partage d'influence qu'elle sanctionne le Vilayet de Tripoli, marque pour la sphère d'influence Française par rapport à la Tripolitaine Cyrénaïque une limite que le Gouvernement de la République n'a pas l'intention de dépasser, et qu'il n'entre pas dans ses projets d'interrompre les communications commerciales établies par les voies caravanières de Tripoli vers les régions visées par la susdite Convention.

Ces explications, que nous sommes convenus de tenir secrètes, contribueront, je n'en doute pas, à consolider sur ce point comme sur d'autres les relations amicales entre nos deux pays.

Veuillez, &c.

(Signé) BARRÈRE.

Annex 7

ACCORDS FRANCO-ITALIENS DES 1er-2 NOVEMBRE 1902 : ÉCHANGES DE LETTRES ENTRE M. BARRÈRE ET M. PRINETTI

Ministère des affaires étrangères, *Les accords franco-italiens de 1900-1902*, Documents diplomatiques, Paris, Imprimerie nationale, 1920, pp. 7-10.

N° 7.

M. Barrère, Ambassadeur de la République française à Rome, à M. Prinetti, Ministre des Affaires étrangères d'Italie.

Rome, le 1er novembre 1902.

Par sa lettre en date de ce jour, Votre Excellence a bien voulu me rappeler qu'à la suite de nos conversations relatives à la situation réciproque de la France et de l'Italie dans le bassin méditerranéen et plus spécialement aux intérêts respectifs des deux pays en Tripolitaine Cyrénaique et au Maroc, il nous a paru opportun de préciser les engagements qui résultent des lettres échangées à ce sujet les 14 et 16 décembre 1900 entre le Marquis Visconti Venosta et moi, en ce sens que chacune des deux puissances pourra librement développer sa sphère d'influence dans les régions susmentionnées au moment qu'elle jugera opportun et sans que l'action de l'une d'elles soit nécessairement subordonnée à celle de l'autre.

Il a été expliqué à cette occasion que par la limite de l'expansion française en Afrique septentrionale visée dans ma lettre précitée du 14 décembre 1900, on entend bien la frontière de la Tripolitaine indiquée par la carte annexée à la déclaration du 21 mars 1899, additionnelle à la convention anglaise du 14 juin 1898.

Cette interprétation ne laissant, ainsi que nous l'avons constaté, subsister actuellement entre nos Gouvernements aucune divergence sur leurs intérêts respectifs dans la Méditerranée, et dans le but d'éliminer d'une manière définitive tout malentendu possible entre nos deux pays, vous avez été autorisé par le Gouvernement de Sa Majesté à formuler spontanément certaines déclarations destinées à préciser les rapports généraux de l'Italie vis à-vis de la France.

J'ai l'honneur d'accuser réception à Votre Excellence et de Lui donner acte au nom de mon Gouvernement de ces déclarations.

Je suis autorisé, en retour, à formuler de la manière suivante les conditions dans lesquelles la France entend, de son côté, dans le même esprit amical, régler ses rapports généraux vis-à-vis de l'Italie.

Au cas où l'Italie serait l'objet d'une agression directe ou indirecte de la part d'une ou de plusieurs puissances, la France gardera une stricte neutralité.

Il en sera de même au cas où l'Italie, par suite d'une provocation directe, se trouverait réduite à prendre, pour la défense de son honneur ou de sa sécurité, l'initiative d'une déclaration de guerre. Dans cette éventualité, le Gouvernement royal devra communiquer préalablement son intention au Gouvernement de la République, mis ainsi à même de constater qu'il s'agit bien d'un cas de provocation directe.

Je suis autorisé également à vous déclarer qu'il n'existe de la part de la France, et qu'il ne sera conclu par elle aucun protocole ou disposition militaire d'ordre contractuel international qui serait en désaccord avec les présentes déclarations.

Il est entendu enfin que, sauf en ce qui concerne l'interprétation des intérêts méditerranéens des deux puissances, laquelle a un caractère définitif, conformément à l'esprit de la correspondance échangée les 14 et 16 décembre 1900 entre le Marquis Visconti Venosta et moi, les déclarations qui précèdent et qui doivent rester secrètes, étant en harmonie avec les engagements internationaux actuels de l'Italie, auront leur pleine valeur aussi longtemps que le Gouvernement royal n'aura pas fait connaître au Gouvernement de la République que ces engagements ont été modifiés.

BARRÈRE.

N° 8.

M. PRINETTI, Ministre des Affaires étrangères d'Italie,
à M. BARRÈRE, Ambassadeur de la République française à Rome.

Rome, le 1er novembre 1902.

A la suite des conversations que nous avons eues touchant la situation réciproque de l'Italie et de la France dans le bassin méditerranéen, et touchant plus spécialement les intérêts respectifs des deux nations en Tripolitaine Cyrénaïque et au Maroc, il nous a paru opportun de préciser les engagements qui résultent des lettres échangées à ce sujet entre Votre Excellence et le Marquis Visconti Venosta, les 14 et 16 décembre 1900, en ce sens que chacune des deux Puissances pourra librement développer sa sphère d'influence dans les régions susmentionnées au moment qu'elle jugera opportun, et sans que l'action de l'une d'elles soit nécessairement subordonnée à celle de l'autre. Il a été expliqué à cette occasion que, par la limite de l'expansion française en Afrique septentrionale, visée dans la lettre précitée de Votre Excellence du 14 décembre 1900, on entend bien la frontière de la Tripolitaine indiquée par la carte annexée à la déclaration du 21 mars 1899, additionnelle à la Convention franco-anglaise du 14 juin 1898.

Nous avons constaté que cette interprétation ne laissait subsister actuellement entre nos Gouvernements aucune divergence sur leurs intérêts respectifs dans la Méditerranée.

A l'occasion de ces pourparlers, et pour éliminer d'une manière définitive tout malentendu possible entre nos deux pays, je n'hésite pas, pour préciser leurs rapports généraux, à faire spontanément à Votre Excellence, au nom du Gouvernement de Sa Majesté le Roi, les déclarations suivantes :

Au cas où la France serait l'objet d'une agression directe ou indirecte de la part d'une ou de plusieurs puissances, l'Italie gardera une stricte neutralité.

Il en sera de même au cas où la France, par suite d'une provocation directe se trouverait réduite à prendre, pour la défense de son honneur ou de sa sécurité, l'initiative d'une déclaration de guerre. Dans cette éventualité, le Gouvernement de la République devra communiquer préalablement son intention au Gouvernement royal, mis ainsi à même de constater qu'il s'agit bien d'un cas de provocation directe.

Pour rester fidèle à l'esprit d'amitié qui a inspiré les présentes déclarations, je suis autorisé, en outre, à vous confirmer qu'il n'existe de la part de l'Italie, et qu'il ne sera conclu par elle aucun protocole ou disposition militaire d'ordre contractuel international qui serait en désaccord avec les présentes déclarations.

J'ai à ajouter que, sauf en ce qui concerne l'interprétation des intérêts méditerranéens des deux Puissances, laquelle a un caractère définitif, conformément à l'esprit de la correspondance échangée, les 14 et 16 décembre 1900, entre Votre Excellence et le Marquis Visconti Venosta, les déclarations qui précèdent étant en harmonie avec les engagements internationaux actuels de l'Italie, le Gouvernement royal entend qu'elles auront leur pleine valeur aussi longtemps qu'il n'aura pas fait savoir au Gouvernement de la République que ces engagements ont été modifiés.

Je serais reconnaissant à Votre Excellence de vouloir bien m'accuser réception de la présente communication, qui devra rester secrète, et m'en donner acte au nom du Gouvernement de la République.

PRINETTI.

N° 9.

M. Barrère, Ambassadeur de la République française à Rome,
à M. Prinetti, Ministre des Affaires étrangères d'Italie.

Rome, le 2 novembre 1902.

Au sujet des déclarations que nous avons échangées par nos lettres en date d'hier sur les rapports généraux de la France et de l'Italie, il me semblerait nécessaire, pour éviter toute possibilité de malentendu, de préciser le sens et la portée qui doivent être attribués au mot « directe » dans l'expression « provocation directe » employée dans lesdites déclarations.

Je vous serais reconnaissant de me confirmer l'interprétation que comporte, dans votre opinion, le terme dont il s'agit.

Barrère.

N° 10.

M. Prinetti, Ministre des Affaires étrangères d'Italie,
à M. Barrère, Ambassadeur de la République Française à Rome.

Rome, le 2 novembre 1902.

Vous avez bien voulu m'exprimer, par votre lettre d'aujourd'hui, le désir de voir précisés par moi, afin d'éviter toute possibilité de malentendu, le sens et la portée qui doivent être attribués au mot *directe* dans l'expression *provocation directe*, employée dans les déclarations que je vous ai faites par ma lettre en date d'hier.

Je m'empresse de vous confirmer à ce sujet ce que j'ai eu l'occasion de vous dire de vive voix. Le mot *directe* a ce sens et cette portée, à savoir que les faits pouvant être éventuellement invoqués comme constituant la provocation doivent concerner les rapports directs entre la Puissance provocatrice et la puissance provoquée.

Jules Prinetti.

Annex 10

TREATY OF OUCHY BETWEEN THE OTTOMAN EMPIRE AND ITALY OF 15 OCTOBER 1912

Accord préliminaire de paix entre l'Italie et la Turquie
signé à Lausanne le 15 octobre 1912, *in Trattati e Convenzioni*
tra il Regno d'Italia e gli altri Stati, atti conclusi dal 1-I-1912
al 31-XII-1913, Tipografia del Regio Ministerio
degli Affari Esteri, Roma, 1930, pp. 226-232.

XIV.

15 ottobre 1912.

OUCHY.

Accordo preliminare di pace tra l'Italia e la Turchia seguito da un Firmano Imperiale, da un Decreto Reale e da un Iradé Imperiale.

SA MAJESTÉ LE ROI D'ITALIE et SA MAJESTÉ L'EMPEREUR DES OTTOMANS animés par un égal désir de faire cesser l'état de guerre existant entre les deux Pays et en vue de la difficulté d'y parvenir, provenant de l'impossibilité pour l'Italie de déroger à la loi du février 1912, qui a proclamé sa souveraineté sur la Tripolitaine et sur la Cyrénaique, et pour l'Empire Ottoman de formellement reconnaître cette souveraineté, ont nommé leurs Plénipotentiaires :

lesquelles après avoir échangé leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, sont convenus du modus procedendi secret suivant :

I. — Le Gouvernement Impérial s'engage à ce que dans un délai de trois jours au plus tard un Firman Impérial soit émané, adressé aux populations de la Tripolitaine et de la Cyrénaique, conforme au texte ci-joint (Annexe n. 1).

II. — Le représentant du Sultan et des chefs religieux devront être préalablement agrées par le Gouvernement Royal.

Les appointements du susdit représentant et des Naibs seront fixés d'accord par les deux Gouvernements et payés sur les recettes locales ; ceux du Cadi

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seront au contraire payés par le Gouvernement Impérial.

Le nombre des susdits chefs religieux ne pourra pas surpasser le nombre de ceux existant au moment de la déclaration de la guerre.

III. — Le Gouvernement Royal s'engage à ce que dans un délai de trois jours au plus tard à dater de la promulgation du Firman Impérial mentionné à l'article I, un décret Royal soit émané conforme au texte ci-joint (Annexe n. 2).

IV. — Le Gouvernement Impérial s'engage à ce que dans un délai de trois jours, au plus tard, à dater de la promulgation du Firman Impérial mentionné à l'article I, un Iradé Impérial soit émané conforme au texte ci-joint. (Annexe n. 3).

V. — Immédiatement après la promulgation des trois actes unilateraux susdits les Plénipotentiaires des deux Hautes Parties contractantes signeront un Traité public conforme au texte ci-joint (Annexe n. 4).

VI. — Il reste naturellement entendu et consacré par le présent Accord que le Gouvernement Impérial s'engage à ne pas envoyer et à ne pas permettre l'envoi de Turquie en Tripolitaine et Cyrénaique d'armes, de munitions, de soldats et d'officiers.

VII. — Les dépenses supportées respectivement par les deux Gouvernements pour l'entretien des prisonniers de guerre et des ôtages seront considérées comme compensées.

VIII. — Les deux Hautes Parties contractantes s'engagent à maintenir secret le present Accord.

Toutefois les deux Gouvernements se réservent la faculté de rendre public cet Accord au moment de la présentation du Traité public (Annexe n. 4) aux Parlements respectifs.

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Le présent Accord entrera en vigueur le jour même de sa signature.

IX. — Il est bien entendu que les Annexes mentionnés dans le présent Accord en forment partie intégrante.

En foi de quoi les Plénipotentiaires ont signé le présent Accord et y ont apposé leurs cachets.

Fait à Lausanne en deux exemplaires, le 15 octobre 1912.

(*L. S.*) Pietro Bertolini
(*L. S.*) Guido Fusinato
(*L. S.*) Giuseppe Volpi

(*L. S.*) Mehemmed Naby
(*L. S.*) Roumbeyoglou Fahreddin.

(ANNESSO N. 1).

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AUX HABITANTS DE LA TRIPOLITAINE ET DE LA CYRÉNAIQUE

Mon Gouvernement se trouvant d'une part dans l'impossibilité de vous donner les secours efficaces qui vous sont nécessaires pour défendre votre pays, soucieux d'autre part de votre bonheur présent et avenir ; voulant éviter la continuation d'une guerre désastreuse pour vous et vos familles et dangereuse pour Notre Empire ; afin de faire renaître dans votre pays la paix et la prosperité ; me prévalant de mes droits souverains je vous concède une pleine et entière autonomie. Votre pays sera régi par des nouvelles lois et des règlements spéciaux, à la préparation desquels vouz apporterez la contribution de vos conseils afin qu'ils correspondent à vos besoins et à vos coutûmes.

Je nomme auprès de vous comme mon représentant mon fidèle serviteur Chemseddin Bey avec le titre de Naïb-ul-Sultan, que je charge de la protection des intérêts ottomans dans votre pays. Le mandat que je lui confère a une durée de cinq ans ; passé ce délai je me réserve de renouveler son mandat ou bien de pourvoir à sa succession.

Notre intention étant que les dispositions de la loi sacrée du Chéri restent constamment en vigueur, nous nous réservont dans ce but la nomination du Cadi, qui à son tour nommera les Naïbs parmi les ulémas locaux, conformément aux prescriptions du Chéri. Les émoluments de ce Cadi seront payés par nous et ceux du Naïb-ul-Sultan aussi bien que ceux des autres fonctionnaires du Chéri seront prélevés sur les recettes locales.

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(Annesso n. 2).

SA MAJESTÉ LE ROI D'ITALIE :

vue la loi du 25 février 1912, n. 38, par laquelle la Tripolitaine et la Cyrénaique ont été soumises à la souveraineté pleine et entière du Royaume d'Italie ;

Dans le but de hâter la pacification des susdites provinces ;

Sur la proposition du Conseil des Ministres ;

Nous avons décrété et decrétons :

Art. 1er. — Pleine et entière amnistie est accordée aux habitants de la Tripolitaine et de la Cyrénaique, qui aient pris part aux hostilités ou qui se seraient compromis en leur occasion, sauf les crimes du droit commun. En conséquence aucun individu de quelque classe ou condition qu'il soit ne pourra être poursuivi ou troublé dans sa personne ou ses biens ou dans l'exercice de ses droits en raison de ses actes politiques ou militaires, ou bien des opinions qu'il aurait exprimées pendant les hostilités. Les personnes détenues et déportées de ce fait seront immédiatement remises en liberté.

Art. 2. — Les habitants de la Tripolitaine et de la Cyrénaique continueront à jouir comme par le passé de la plus grande liberté dans la pratique du culte musulman. Le nom de Sa Majesté Impériale le Sultan, comme Kalife, continuera à être prononcé dans les prières publiques des Musulmans, et son représentant est reconnu en la personne nommée par elle ; ses appointements seront prélévés sur les recettes locales.

Les droits des fondations pieuses (vakouf) seront respectés comme par le passé et aucune entrave ne sera apportée aux relations des Musulmans avec le chef religieux appelé Cadi, qui sera nommé par le Cheix-ul-Islamat et avec les Naïbs nommés par lui même et dont les appointements seront prélévés sur les recettes locales.

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Art. 3. — Le susdit représentant est aussi reconnu à l'effet de la protection des intérêts de l'Empire Ottoman et des sujets ottomans, tels qu'ils subsistent dans les deux provinces après la loi du 25 février 1912, n. 83.

Art. 4. — Une Commission, nommé par Décret Royal et dont formeront part aussi des notables indigènes, devra proposer les règlements civils et administratifs pour les deux Provinces en s'inspirant aux principes de la liberté et au respect des usages et des coutûmes locales.

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(Annesso n. 3).

Il sera procédé à des réformes administratives et judiciaires afin d'assurer aux habitants des îles de la mer Egée sujettes à la souveraineté ottomane, la distribution égale de la justice, la sécurité et le bien-être sans distinction de culte et de religion.

Les fonctionnaires et les juges seront nommés parmi les personnes notoires connaissant la langue locale et ayant la capacité voulue.

Pleine et entière amnistie est accordée aux susdits habitants qui aient pris part aux hostilités ou qui se seraient compromis en leur occasion, sauf les crimes de droit commun. En conséquence aucun individu de quelque classe ou condition qu'il soit ne pourra être poursuivi ou troublé dans sa personne ou ses biens ou dans l'exercice des ses droits en raison de ses actes politiques ou militaires ou bien des opinions qu'il aurait exprimées pendant les hostilités. Les personnes détenues et déportées de ce fait seront immédiatement remises en liberté.

Annex 13

AGREEMENT BETWEEN ITALY AND GREAT BRITAIN ON THE SENOUSSI OF 31 JULY 1916 AND THE ADHERENCE OF FRANCE

Exchange of letters between the Italian Minister of Foreign Affairs
and the British Ambassador in Rome, 31 July 1916, and letter
from the French Ambassador in Rome to the Italian Minister
of Foreign Affairs, 11 February 1917,
in Ministero delle Colonie, *Accordo fra Italia ed Inghilterra*
per la Senussia (31 Luglio 1916) e adesione della Francia,
Roma, Tipografia del Ministero degli Affari Esteri, 1917. Translation.

TRANSLATION

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The Ministry of Foreign Affairs to the Ministry for the Colonies

No. 3

Rome, 3 August 1916

For Your Excellency's kind attention I am sending you a copy of the notes exchanged on 31 July with the British Ambassador concerning the agreement fixing the bases of joint action of Italy and Britain with regard to the Senoussi (Annexes I and II).

S. SONNINO

(Annex I)

The Ministry of Foreign Affairs to the British Ambassador in Rome

Rome, 31 July 1916

Dear Ambassador

With a view to placing the relations between Italy and Britain on a friendly and sound basis in our common interests with regard to Senoussia, the following clauses have been carefully examined and agreed together with Your Excellency, with the consent of the Ministry of the Colonies, and I now on behalf of the Government of the King give them and seek from Your Excellency official consent so that a complete understanding may be reached between our two Governments on the basis of these terms.

Italy and Britain, having already agreed on the closure of the Egyptian frontier to supplies to the rebels, and the closure of the markets of Cyrenaica to the rebels, but not so as to starve friendly peoples, agree:

1.

A) - No agreements will be made with the Senoussi without prior agreement between them;

2.

The opening and closing of the markets in Egypt and in Cyrenaica will be regulated by agreement between the two powers;

3.

In case of need, military cooperation may extend to Cyrenaican and Egyptian territory in an area to be determined in each case, and with facilities for disembarking at the landing places of Bardia and Solum. It is agreed that neither the British nor the Italians will establish permanent posts nor build forts on the territory they may be obliged to cross to attack an enemy;

4.

They will cooperate in the surveillance of the coasts, both being entitled reciprocally to cross on either side of the maritime boundaries, on such terms as will be agreed between the naval commands in Cyrenaica and in Egypt;

5.

They will provide for an exchange of information between Egypt and Cyrenaica.

B) - With regard to the special negotiations with Sayyid Idris now initiated, Italy and Britain agree further:

a) to recognize the confraternity and religious powers of the Senoussi and the functions of their head in the person of Sayyd Idris El Senuossi;

b) not to grant to the head of the confraternity any territorial concession;

c) not to grant the head of the confraternity any independence or autonomy or anything else that may harm the sovereignty of he State;

d) the possibility of granting the head of the confraternity, in each case under the sovereignty of the occupying state, administrative autonomy for certain oases;

e) an exchange of views on the following points: whether, and if so which facilities can be granted generally to the Senoussi; and whether and what subsidies, honours and privileges may in particular be granted to the family of the Senoussi and to the head of the confraternity;

f) for their mutual advantage, not to conclude, either of them on their own account, the negotiations now in hand with Sayyid Idris without prior general agreement on the clauses that may have repercussions in Egypt and Cyrenaica.

The provisions of this agreement do not prejudice the matters still to be settled in arranging for the frontiers between Egypt and Cyrenaica, questions regarding which the position of the contracting parties remains unprejudiced, as they were before signature of the agreement.

Yours etc.

S. SONNINO

(*Annex II*).

The British Ambassador in Rome to the Minister of Foreign Affairs

(English text)

TRANSLATION

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The Ministry for the Colonies to the Ministry of Foreign Affairs

No. 84/4-h

Rome, 3 August 1916

I thank Your Excellency for sending me with letter No. 3 of today's date a copy of the notes exchanged on 31 July between Your Excellency and the British Ambassador concerning the agreement fixing the bases of joint action by Italy and Britain with regard to the Senoussi.

COLOSIMO

TRANSLATION

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The Minister of Foreign Affairs to the Minister for the Colonies

Rome, 12 February 1917

By note of yesterday's date, the French ambassador has passed me a memorandum whereby the government of the French Republic declares its adhesion to the agreement made on 31 July between Britain and Italy concerning the Senoussi.

I enclose a copy of the note and of the memorandum and would ask Your Excellency kindly to consider whether the terms of the memorandum comply with the Anglo-Italian agreement, which if so will enable me to confirm receipt of the French communication without comment.

S. SONNINO

(Annex)

The French Ambassador in Rome to the Minister of Foreign Affairs

(French Text)

TRANSLATION

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The Minister of Foreign Affairs to the Minister for the Colonies

Rome, 26 April 1917

No. 14

Your Excellency,

For Your Excellency's information, I am sending you enclosed, by confidential messenger, a copy of the agreement concerning the Senoussi signed in London on 28 March by the Minister of Foreign Affairs of Britain, the Italian Ambassador and the French Ambassador in London.

SONNINO

(Annex)

(French Text)

Annex 19

TREATY OF AL-RAJMA BETWEEN ITALY AND SAYYID IDRIS OF 25 OCTOBER 1920

Curotti, T.: *La Libia*, Borgo S. Dalmazzo (Cuneo),
Edizioni Istituto Grafico Bertello, 1973, pp. 66-71. Italian text. Translation.

TESTO DELL'ACCORDO DI ER-REGIMA

« Nel Nome di Dio Clemente e Misericordioso »

PREMESSA

Il Governo Italiano, che ha conosciuto per prova durante la guerra mondiale la sollecitudine del Sayed Mohammed Idrìs el Mahdi es-Senussi nel collaborare col Governo stesso per la tranquillità, il benessere e l'ordinamento del paese, gli conferiva la dignità di Emir-es-Senussi.

Resta stabilito quanto segue:

a) Il Governo delega all'Emir-es-Senussi la qualità di capo della Amministrazione autonoma delle oasi di Augila, Gialo, Cufra e Giarabùb, con facoltà di adottare Agedabia come suo capoluogo per l'amministrazione di esse;

b) l'Emiro avrà il diritto di presentare al Governo un certo numero di rappresentanti delle popolazioni delle oasi suddette, in proporzioni dei relativi abitanti; ed

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[*] Dagli atti dell'Archivio Storico del Ministero degli Affari Esteri.

essi saranno ammessi al Parlamento locale della Cirenaica, alla pari e allo stesso titolo degli altri rappresentanti;

c) il Governo quante volte emanerà provvedimenti che riguardino anche le oasi (ad esempio ordinamenti fondiari) sentirà il parere dell'Emiro, facendo menzione di ciò nelle relative ordinanze;

d) all'Emir-es-Senussi sono attribuiti gli onori, i distintivi e le qualifiche determinate in prospetto a parte (allegato A).

Art. 1 - Il Governo Italiano non ha difficoltà da opporre al desiderio del Sayed Idris acché la dignità di Emir-es-Senussi sia trasmissibile ereditariamente ai suoi figli e discendenti in ordine di età.

Per il presente, l'Emiro eleggerà provvisoriamente uno dei membri della sua famiglia a suo successore nella dignità e attribuzioni annesse.

Art. 2 - L'Emiro godrà piena libertà, d'accordo col Governo, di soggiornare e di girare per ogni punto della Cirenaica.

Il Governo sarà molto lieto tutte le volte che l'Emiro, nell'interesse e per il bene del paese, sarà per fargli pervenire le proprie considerazioni sull'andamento delle cose.

Art. 3 - L'Emiro potrà adottare una insegna sua personale che potrà innalzare sulla sua dimora in ogni località ove si troverà a soggiornare e nei paesi di amministrazione autonoma; ma sulle coste e nei luoghi di confine di detti paesi, a tutela internazionale dei relativi territori, dovrà sventolare la sola bandiera italiana.

Art. 4 - E ovvio che il Governo, animato com'è dall'intenzione di rispettare la proprietà e di non attentare menomamente ai diritti delle collettività e degli individui sulle loro terre, terrà conto degli interessi della popolazione e della Senussia e del parere e pensiero che gli sia per manifestare l'Emiro, nell'accordare a società permessi e concessioni per l'esecuzione d'opere di miglioramento e commerciali in tutta la Cirenaica.

Affinché sia chiaro agli occhi di tutti che il Governo non intende cercare interessi con esclusione dei cittadini del luogo, ogni grande intrapresa con capitale superiore a cinquecentomila lire sarà, d'ora innanzi, obbligata a riservare per sei mesi interi almeno un quarto del proprio capitale alla sottoscrizione dei cittadini del luogo (ivi compresa la nobile famiglia senussita), per associarli all'impresa.

Art. 5 - Il Governo metterà a disposizione dell'Emiro un piroscafo conveniente per la Sua dignità, ogni qualvolta Egli personalmente o i nobili Sayed Senussiti della Sua famiglia intendano compiere qualche viaggio.

Art. 6 - La popolazione sia sedentaria, sia nomade della Cirenaica verrà lasciata in possesso, per la sicurezza e difesa, delle armi che detiene, fermi restando, per i Consigli degli Anziani, gli obblighi stabiliti dall'Art. 9 dell'Ordinamento Politico Amministrativo della Cirenaica approvato con Decreto Governatoriale n. 2260 del 1° marzo 1920.

E così saranno i capi delle cabile e i capi dei capi che, secondo la Legge Fondamentale, regoleranno le cose delle loro tribù, e in conformità di questa legge saranno essi i responsabili verso il Governo dell'ordine e della sicurezza del territorio di soggiorno e di percorso dei loro gruppi.

Perciò l'Emiro provvederà a sopprimere per sempre i campi armati e relativi caracòl, e qualunque organizzazione politica, amministrativa e militare dai paesi che non siano affidati alla sua amministrazione.

Quanto è detto nel precedente comma avrà esecuzione entro otto mesi dalla firma del presente accordo.

Art. 7 - Il Governo dichiara solennemente di non avere alcuna intenzione di espropriare le popolazioni delle loro terre di proprietà privata o collettiva, tanto meno le zauie, a favore di emigranti.

Art. 8 - Il Governo assegnerà ai capi tribù delle oasi stipendi analoghi a quelli che saranno corrisposti agli altri capi tribù. Questi stipendi avranno carattere continuativo e saranno stabiliti tenendo il massimo conto delle designazioni che verranno presentate al Governo da parte dell'Emiro.

Art. 9 - Resta inteso che tributi saranno imposti secondo la Legge Fondamentale, sòlo dopo che il Parlamento locale della Cirenaica avrà esaminato la possibilità di stabilirli, tenendo conto delle condizioni del paese. Qualora nascessero circostanze per le quali paresse utile consultare capi importanti delle tribù, i quali in quel momento non si trovassero a far parte del Parlamento, potranno a cura del Governo essere convocati e consultati sull'argomento.

Art. 10 - L'Emiro, quando le circostanze e l'interesse generale lo richiedano, potrà consigliare il Governo a mitigare la pena di qualche condannato, o procurargli il perdono seguendo le vie legali.

Art. 11 - Nelle truppe della Cirenaica saranno nominati ufficiali e graduati nativi, nelle forme e nei modi previsti nella Legge Fondamentale. Per gli ufficiali italiani e nativi da destinare eventualmente nei paesi dei quali il Governo ha affidato l'amministrazione all'Emiro, il Governo agirà d'accordo coll'Emiro per stabilirne le sedi o terrà gran conto delle osservazioni dell'Emiro sui loro comportamenti.

L'Emir-es-Senussi potrà scegliere un ufficiale superiore arabo o italiano, secondo il suo desiderio, per la sua guardia del corpo.

Art. 12 - Come è stabilito nella Legge Fondamentale, tutti gli arabi della Cirenaica saranno esentati dal servizio militare, tranne quelli che liberamente e spontaneamente si arruoleranno come volontari.

Art. 13 - Saranno istituite al più presto possibile scuole elementari inferiori (ibtidaìa) e medie (idadìa), secondo le esigenze dei singoli luoghi, e in esse saranno insegnate tutte le materie religiose e moderne in lingua araba o italiana, secondo le distinzioni stabilite nell'art. 11 della Legge Fondamentale.

Così è riconosciuta dalle due parti la necessità di istituire due scuole, una media inferiore (idadìa) e l'altra media superiore (ahlìa) a Bengasi, una media inferiore (idadìa) a Derna, una elementare superiore (rushdìa) a Tobruk, Agedabia e Merg, come pure saranno istituite, appena riconosciutane la necessità, scuole elementari superiori a Maràwa e a Zawia el Beda.

Quanto alle scuole elementari inferiori, saranno istituite in tutti i centri della costa e dell'interno, e il mandare i ragazzi ad esse sarà obbligatorio per i musulmani.

Sull'Ordinamento scolastico decideranno il Parlamento e le Commissioni speciali per l'istruzione che all'uopo esso sarà eventualmente per istituire.

Art. 14 - Lingue ufficiali nel Paese saranno l'italiano e l'arabo, secondo la Legge Fondamentale.

Anche nei tribunali i processi si faranno in italiano e in arabo, se possibile.

Art. 15 - Il Governo, per quanto possibile, corrisponderà degli stipendi ad alcuni capi senussiti, secondo che l'Emiro indicherà e riterrà opportuno.

Il Governo riconoscerà l'esenzione delle zauie senussite da tutte le imposte (daràib), nei limiti di quanto si praticava dal Governo turco.

Art. 16 - Il Governo stabilirà per l'Emiro un assegno (maàsc) sufficiente al funzionamento della sua amministrazione privata e alle sue spese, insieme con vari assegni (maàsc) per i membri della famiglia senussita, giusta il prospetto annesso (allegato B).

Il pagamento all'Emiro verrà fatto annualmente, vale a dire il Governo gli verserà l'assegno di un anno completo, a partire dal mese di ottobre del 1919, nel quale avvenne l'accordo fra le due parti. Gli assegni della famiglia senussita saranno pagati per mezzo dell'Emiro, e i membri della famiglia senussita godranno il diritto che, alla loro morte, il loro assegno sia trasferito ai loro eredi; rimanendo inteso che l'Emiro avrà il diritto di ripartire tale assegno tra gli eredi, secondo le esigenze della legge religiosa e dell'interesse familiare.

Quale capo della famiglia, l'Emiro regolerà i comportamenti di tutti i componenti di essa e ne sarà garante e responsabile al Governo. Conseguentemente, qualora uno di essi commettesse, senza intenzione — Iddio non voglia — un reato o una cosa passibile di pena, il procedimento non sarà aperto senza prima aver sentito il pensiero dell'Emiro.

Art. 17 - Il Governo stabilirà inoltre una somma speciale, non inferiore a quanto occorre, per il mantenimento di un numero adeguato di soldati non al disotto di mille e suscettibili di essere aumentati d'accordo col Governo, destinati alla guardia del corpo dell'Emiro, ai servizi di onore, e alla tutela della sicurezza delle oasi e dei paesi dei quali il Governo gli affidi di garantire la tranquillità e la sicurezza.

Art. 18 - L'Emiro si asterrà in modo assoluto dalla riscossione del cosiddetto gumruk (dazio) e dalla percezione del vergù (imposta fondiaria) e delle asciàr (decime), ecc. mentre il Governo non si opporrà a che egli riceva per la sua persona e le sue zauie la zadàh religiosa che gli venga data spontaneamente e senza coazione, come esige la Sciarla es-Scerifa.

Art. 19 - Le buone relazioni del Governo e dell'Emiro importano che egli coadiuvi il Governo col massimo impegno per la buona applicazione della Legge Fondamentale.

A questo effetto l'Emiro si impegna a favorire presso le popolazioni l'applicazione di detta legge e di quelle che ne sono la conseguenza, queste ultime soggette all'approvazione del Parlamento, in modo che il paese possa reggersi con i liberi ordinamenti accordatigli.

In conseguenza, e in applicazione dei detti principi di libertà, il commercio sarà libero in tutto il paese fino al più lontano interno e viceversa, e il Governo favorirà nel miglior modo la corrente degli scambi, anche con opere e stabilimenti utili ai carovanieri.

L'Emiro, per sua parte, s'impegna a svolgere opera di persuasione mediante la sua alta influenza, affinché nessun ostacolo sia opposto da parte di chicchessia alla creazione di strade ordinarie e ferrate, di linee postali, automobilistiche, telegrafiche e telefoniche, lavori tutti richiesti dal progresso del paese e dall'interesse e prosperità del commercio.

Art. 20 - Per quanto non è diversamente regolato nel presente accordo, le parti si impegnano a riesaminare le questioni considerate nel « modus vivendi n. 1 », accettato in massima dal Sayed Idrìs, e ogni altra questione che potesse sorgere dopo questo accordo, per amichevoli risoluzioni conformi ai principi qui stabiliti. Così, ad esempio, per quanto riguarda le modalità di riscossione delle dogane ecc. nei paesi affidati all'amministrazione autonoma dell'Emiro.

Er-Règima, addì 25 ottobre 1920 - 13 Sàfar 1339.

ALLEGATO A

PROSPETTO DELLE QUALIFICHE, DEGLI ONORI E DEI DISTINTIVI SPETTANTI ALL'EMIR-ES-SENUSSI

Il Governo conferirà all'Emir-es-Senussi il titolo onorifico di Altezza.

Nelle cerimonie ufficiali il primo posto d'onore dopo il Governatore spetta all'Emiro.

All'arrivo dell'Emiro in forma ufficiale in qualunque città munita di artiglieria, gli spettano le salve d'uso in numero di diciassette colpi di cannone. Al suo arrivo per via di terra o di mare, un reparto di truppe gli rende gli onori d'uso.

Sinché soggiorna ufficialmente in una città di paese musulmano, al suo passaggio le guardie delle caserme, degli accampamenti e di ogni altro luogo militare chiamano il picchetto di guardia, che si schiera sull'attenti con tre squilli. Un reparto di truppa gli rende gli onori quando, nell'occasione dei detti soggiorni, Egli si reca alla preghiera del Venerdì.

Durante il suo soggiorno in qualunque località della Cirenaica, le zauie senussite della circoscrizione di Governo nella quale Egli si trova innalzano la sua insegna.

Allorché l'Emiro viaggia per mare, la nave sulla quale è imbarcato innalza nelle acque territoriali la sua insegna sull'albero di maestra, secondo le consuetudini.

Il Governo terrà il massimo conto delle proposte che l'Emiro sarà per fare per la concessione di decorazioni nell'Ordine della Stella d'Italia.

Er-Règima, addì 25 ottobre 1920 - 13 Sàfar 1339.

ALLEGATO B

Assegno mensile dell'Emiro	Lit. 63.000
Assegno mensile dell'erede presuntivo o designato	Lit. 15.000

A Sayed Ahmed es-Scerif, Mohàmmed Aàbed, Redà, Hilàl, Safi-ed-Din e ai figli di Es-Sayed Alì el-Chattabi, (questi ultimi considerati tutti insieme come una sola persona) lire 10.000 italiane ciascuno.

Le Seyidàt Madri della nobile famiglia senussita, che sono in numero di sei, godranno esse pure di un assegno mensile di tremila lire ciascuna.

Er-Règima, addì 25 ottobre 1920 - 13 Sàfar 1339.

ARTICOLO ADDIZIONALE ALL'ACCORDO DI ER-REGIMA

25 ottobre 1920

Il Governo corrisponderà all'Emir-es-Senussi una somma di due milioni seicentomila lire italiane, delle quali trecentomila in oro, affinché se ne valga per fronteggiare alcune spese connesse all'interesse e alla tranquillità generale.

La metà di detta somma gli verrà versata anticipatamente e l'altra metà dopo due mesi dalla completa soppressione dei campi armati e delle organizzazioni di cui all'articolo 6°.

La somma in oro farà parte della prima rata.

TRANSLATION

TEXT OF THE AGREEMENT OF AL-RAJMA

"In the name of God the Clement and Merciful"

WHEREAS

The Italian Government which has been aware during the World War of the solicitude of Sayyid Mohammed Idris of Mahdi es-Senoussi in cooperating with the said Government for the tranquility, well-being and good order of the country, confers upon him the dignity of Emir-es-Senoussi.

The following is therefore agreed.

a) The Government grants the Emir-es Senoussi the status of head of the autonomous administration of the oases of Aujila, Djialo, Koufra and Djaraboub, with the power of appointing Agedabia as his headquarters for administering them;

b) The Emir shall be entitled to put forward to the Government a certain number of representatives of the populations of the oases in question, proportional to the inhabitants thereof; they shall be admitted to the local parliament of Cyrenaica, on an equal footing and with the same title as the other representatives;

c) The Government whenever issuing provisions affecting the oases as well (e.g. land ordinances) shall obtain the opinion of the Emir, making reference thereto in the ordinances concerned;

d) The Emir-es-Senoussi is granted the honours, distinctions and qualifications set out in a separate summary (Annex A).

Art. 1 - The Italian Government sees no objection to the desire of Sayyid Idris that the dignity of Emir-es Senoussi should be transferable by heredity to his sons and descendants in order of age.

For the time being, the Emir will provisionally appoint one of the members of his family as his successor to the dignity and associated powers.

Art. 2 - The Emir shall have complete freedom with the consent of the Government to stay in and travel to any part of Cyrenaica.

The Government will be very pleased whenever the Emir, in the interests and for the good of the country, should communicate his own opinions on the progress of affairs.

Art. 3 - The Emir may adopt a personal insignia which he may fix on his dwelling in any locality where he may decide to stay and in the countries under autonomous administration; but the Italian flag only may fly along the coasts and at the frontier points of the said countries, for the international protection of the territories concerned.

Art. 4 - It is obvious that the Government, imbued with the desire to respect ownership and not to infringe in any way the rights of the communities and of individuals to their land, will take account of the interests of the population and of the Senoussi and of the opinions and thoughts that the Emir may put to it, in granting permission and concessions to companies for the execution of improvement and commercial works throughout Cyrenaica.

So it may be clear in the eyes of all that the Government does not intend to press interests to the exclusion of the citizens of the place, every major undertaking with capital exceeding 500,000 Lire will as from now be obliged to allocate for six full months at least one quarter of its share capital for subscription by the citizens of the place (including the noble family of the Senoussi) so they may be associated with the undertaking.

Art. 5 - The Government shall place a steamer at the Emir's disposal consistent with his dignity whenever he personally or the noble Sayyid Senoussi of his family intend to undertake travel of any kind.

Art. 6 - The population both sedentary and nomad of Cyrenaica will be left in possession, for its security and defence, of the arms it owns, subject with regard to the Councils of Seniors to the obligations laid down by art. 9 of the Political Administration Ordinance for Cyrenaica approved by the Governor's Decree No. 2260 of 1 March 1920.

The head of the Kabyle and the chiefs of the chiefs will therefore, according to the Fundamental Act, settle matters for their tribes and in accordance with this Act will be responsible to the Government for order and security in the territory they occupy and used by their groups.

The Emir will therefore undertake to suppress for all time the armed camps and watchtowers and any political, administrative and military organization in the countries which are not entrusted to his administration.

The provisions of the preceding paragraph shall take effect within 8 months following signature of this agreement.

Art. 7 - The Government solemnly declares that it has no intention to expropriate the population of their land in private or collective ownership, nor of the Zawiyas, in favour of emigrants.

Art. 8 - The Government shall assign to the chiefs of the tribes of the oases salaries analogous to those paid to other heads of tribes. These salaries will be of a continuous nature and will be decided taking full account of the recommendations that the Emir may make to the Government.

Art. 9 - It is understood that the tribute will be taxed in accordance with the Fundamental Act only after the local Parliament of Cyrenaica has examined the possibility of establishing them, taking account of the conditions in the country. The Government may arrange for the leading chiefs of the tribes who are not at that moment members of Parliament, to be convened and consulted on the matter whenever circumstances arise in view of which it appears desirable for them to be consulted.

Art. 10 - The Emir, when the circumstances and general interest so require, may advise the Government to mitigate the penalty of any condemned person or to grant him a pardon through the legal channels.

Art. 11 - Native officers and non-commissioned officers shall be appointed to the troops of Cyrenaica in the form and in the manner laid down in the Fundamental Act. The Government shall act in accord with the Emir to establish the offices of Italian and native officers that may be appointed to countries whose administration the Government has entrusted to the Emir and will take particular account of the Emir's observations concerning their conduct.

The Emir-es-Senoussi may appoint a superior Arab or Italian officer, as he sees fit, as his body-guard.

Art. 12 - As provided under the Fundamental Act, all Arabs of Cyrenaica shall be exempt of military service, except for those who freely and spontaneously enrol as volunteers.

Art. 13 - Lower elementary schools (ibtidaia) and middle schools (idadia) shall be set up as soon as possible according to the requirements of the individual places and all religious and modern subjects will be taught at them in Arabic or Italian under the terms set out in Art. 11 of the Fundamental Act.

The two parties therefore recognize the need to institute two schools, one lower middle (idadia) and the other higher middle (ahlia) at Benghazi, a lower middle (idadia) at Derna, a superior elementary (rushdia) at Tobruk, Ajedabia and Merg, while as soon as the necessity is apparent, higher elementary schools will be established at Marawa and at Zawiya el Beda.

Lower elementary schools will be set up in all centres of the coast and interior and muslims will be obliged to send their children to them.

The Parliament and the Special Education committees that may be set up for the purpose will decide on a set of rules for the schools.

Art. 14 - The official languages of the country will be Italian and Arabic, according to the Fundamental Act.

Proceedings before the courts will also proceed in Italian and Arabic, where possible.

Art. 15 - The Government will as far as possible pay salaries to certain Senoussi chiefs, as the Emir will indicate and consider necessary.

The Government recognizes the exemption of Senoussi Zawias from all taxes (daraib) within the terms adopted by the Turkish Government.

Art. 16 - The Government will make the Emir an allowance (maasc) sufficient for the operation of his private administration and for his expenses, together with various allowances (maasc) for members of the Senoussi family, in accordance with the attached summary (Annex B).

Payment will be made to the Emir annually, i.e. the Government will pay the allowance for a full year as from the month of October 1919, in which the agreement is made between the two parties. The allowances for the Senoussi family will be paid through the agency of the Emir and the members of the Senoussi family will be entitled to have their allowance transferred at their death to their heirs; it remains understood that the Emir will be entitled to distribute the allowance amongst the heirs according to the requirements of religious law and family interests.

As head of the family, the Emir will govern the behaviour of all members thereof and will act as guarantor and be responsible to the Government for them. Consequently, if any one of them were unintentionally - which God Forbid -

commit a crime or any act subject to a penalty, proceedings will be brought only after the Emir's opinion has first been obtained.

Art 17 - The Government shall further set aside a special sum of not less than what is necessary for the maintenance of an adequate number of soldiers of not less than 1,000 and subject to increase in consultation with the Government, intended as the Emir's body-guard, as a guard of honour, and to protect the security of the oases and of the countries whose tranquility and safety the Government requires him to guarantee.

Art. 18 - The Emir will abstain altogether from the levying of gumruk (tolls) and from the collection of vergu (land tax) and aashar (tithes), etc. while the Government is not opposed to his receiving the religious zadah for himself and his Zawia that may be paid to him spontaneously and without coercion as required by the Sharia es-Sherifa.

Art. 19 - Good relations between the Government and the Emir require the latter to assist the Government to the best of his ability with the proper application of the Fundamental Act.

For this purpose, the Emir undertakes to encourage the application of this law and those that may result therefrom, the latter subject to the approval of Parliament, amongst the population in such a way that the country will be governed by the ordinances freely adopted by it.

In consequence and in application of the said principles of freedom, trade will be free throughout the country to the furthest point of the interior and vice versa, and the Government will encourage to best effect the flow of trade, doing so also with works and establishments useful for caravan traders.

The Emir for his part undertakes to set an example through his great influence so that no obstacle is placed by any person whatever to the building of highways and permanent way, post routes, motor roads, telegraphs and telephones, all of these being works required for the progress of the country and in the interests and for the prosperity of trade.

Art. 20 - Except as may otherwise be provided in this agreement, the parties undertake to reconsider the questions raised in "modus vivendi No. 1", accepted in principle by Sayyid Idris and any other question that may arise subsequent to this agreement, by amicable resolution in accordance with the principles set out herein. This applies, for example, to the provisions for the levying of customs duties etc. in the countries entrusted to autonomous administration by the Emir.

Al-Rajma, this 25th day of October 1920 - 13 Safar 1339.

ANNEX A

SUMMARY OF QUALIFICATIONS. HONOURS AND DISTINCTIONS GRANTED TO THE EMIR-ES-SENOUSSI

The Government confers the honorific title on the Emir-es Senoussi of Highness.

In official ceremonies, the first place of honour after the Governor is given to the Emir.

On the arrival of the Emir in official form in any city provided with artillery, the customary salvos will be fired in the number of 17 canon shots. On his arrival by land or sea, a detachment of troops will render him the customary honours.

On his official residence in a city in a Muslim country, as he passes through the guard at the barracks, the cantonments and any other military location shall call out the piquet of the guard which will stand to attention on a triple trumpet call. A detachment of troops will grant him the honours on the occasion of such stays when he proceeds to prayer on Fridays.

During his stay at any locality in Cyrenaica, the Senoussi Zawiyas of the Government district in which he is located will raise his flag.

When the Emir travels by sea, the ship on which he is embarked will raise his flag in territorial waters on the main mast, as is the custom.

The Government will take full account of proposals that the Emir may make with regard to the granting of decorations of the Order of the Star of Italy.

Al-Rajma, this 25th day of October 1920 - 13 Safar 1339.

ANNEX B

Emir's monthly allowance	Lire 63,000
Monthly allowance of the heir presumptive or designate	Lire 15,000

To Sayyid Ahmed es-Sherif, Mohammed Aabed, Reda, Hilal, Sefi-ed-Din and the sons of Es-Sayyid Eli el-Chattabi (the latter all considered as one person), Lire 10,000 each.

The Seyidat mothers of the noble Senoussi family, who are six in number, shall each enjoy a monthly allowance of 3,000 Lire.

Al-Rajma, this 25th day of October 1920 - 13 Safar 1339.

ADDITIONAL ARTICLE TO THE AL-RAJMA AGREEMENT

25 October 1920

The Government shall pay Emir-es Senoussi a sum of two million, six hundred thousand Italian Lire including three hundred thousand in gold upon which he may draw to cover any expenses connected with the general interest and tranquility.

Half of the said sum will be paid in advance and the other half two months after the complete suppression of the armed camps and organizations referred to in article 6.

The sum in gold will form part of the first instalment.

Annex 20

TREATY OF LAUSANNE OF 24 JULY 1923

Actes signés à Lausanne le 30 janvier et le 24 juillet 1923,
Paris, Imprimerie nationale, 1923, pp. 1-60, 89-101.

CONFÉRENCE DE LAUSANNE
SUR LES AFFAIRES DU PROCHE-ORIENT
(1922-1923)

ACTES
SIGNÉS À LAUSANNE

LE 30 JANVIER ET LE 24 JUILLET 1923

LETTRES ET ACCORDS

EN DATE DU 24 JUILLET 1923

RELATIFS

À DIVERSES CLAUSES DE CES ACTES

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1923

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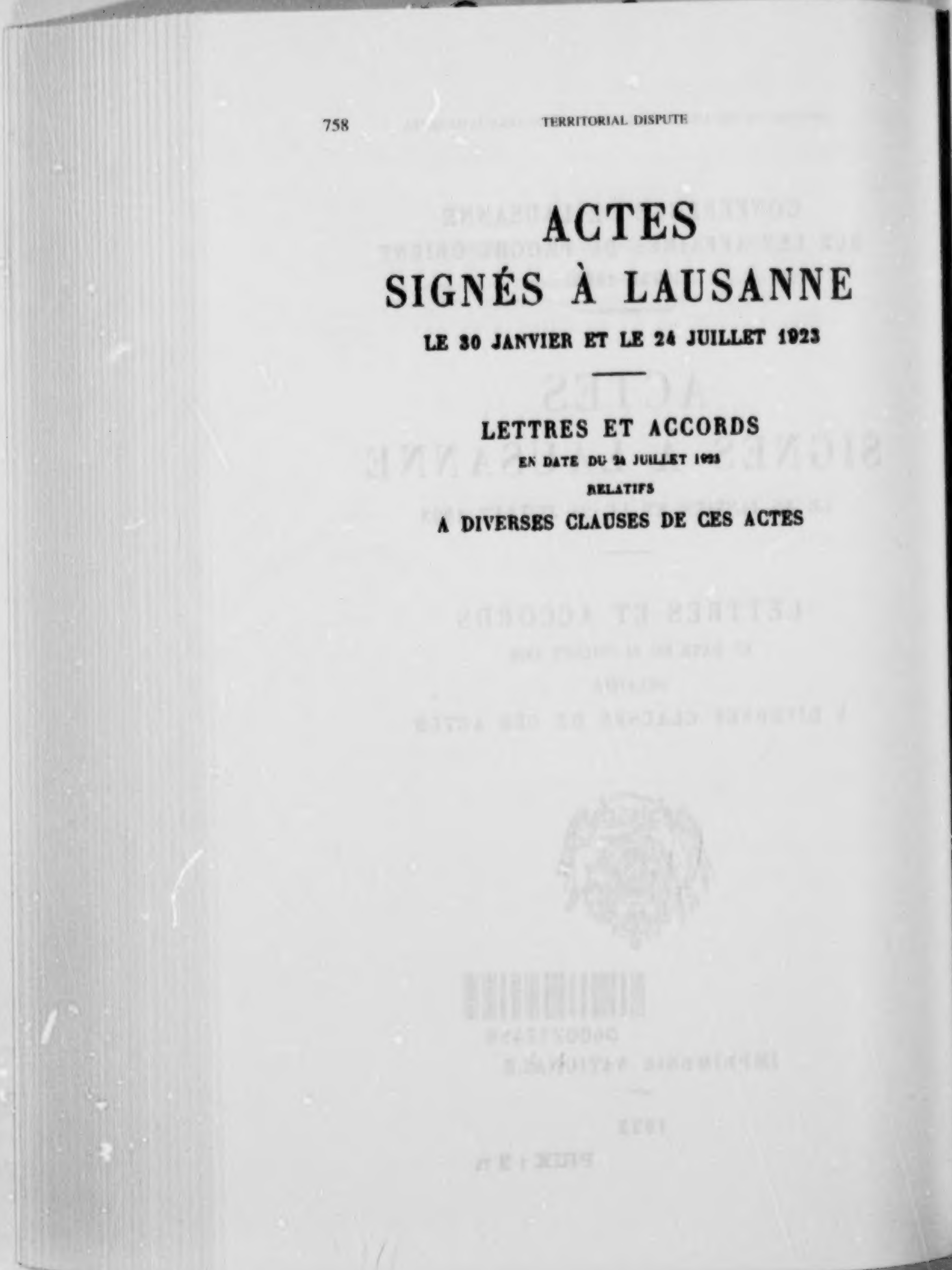

ACTES
SIGNÉS À LAUSANNE

LE 30 JANVIER ET LE 24 JUILLET 1923

LETTRES ET ACCORDS

EN DATE DU 24 JUILLET 1923

RELATIFS

A DIVERSES CLAUSES DE CES ACTES

I

ACTES SIGNÉS À LAUSANNE

LE 30 JANVIER ET LE 24 JUILLET 1923.

I. TRAITÉ DE PAIX

SIGNÉ LE 24 JUILLET 1923.

L'EMPIRE BRITANNIQUE, LA FRANCE, L'ITALIE, LE JAPON, LA GRÈCE, LA ROUMANIE, L'ÉTAT SERBE-CROATE-SLOVÈNE,

d'une part,

ET LA TURQUIE,

d'autre part,

Animés du même désir de mettre fin définitivement à l'état de guerre qui, depuis 1914, a troublé l'Orient,

Soucieux de rétablir entre eux les relations d'amitié et de commerce nécessaires au bien-être commun de leurs nations respectives,

Et considérant que ces relations doivent être basées sur le respect de l'indépendance et de la souveraineté des États,

Ont décidé de conclure un Traité à cet effet et ont désigné pour leurs Plénipotentiaires, savoir :

SA MAJESTÉ LE ROI DU ROYAUME-UNI DE GRANDE-BRETAGNE ET DES TERRITOIRES BRITANNIQUES AU DELÀ DES MERS, EMPEREUR DES INDES :

Le Très Honorable Sir Horace George Montagu **Rumbold**, Baronet, G. C. M. G., Haut-Commissaire à Constantinople;

LE PRÉSIDENT DE LA RÉPUBLIQUE FRANÇAISE :

M. le Général de division Maurice **Pellé**, Ambassadeur de France, Haut-Commissaire de la République en Orient, Grand Officier de l'Ordre national de la Légion d'Honneur;

SA MAJESTÉ LE ROI D'ITALIE :

L'Honorable Marquis Camille **Garroni**, Sénateur du Royaume, Ambassadeur d'Italie, Haut-Commissaire à Constantinople, Grand-Croix des Ordres des Saints Maurice et Lazare et de la Couronne d'Italie;

M. Jules César **Montagna**, Envoyé extraordinaire et Ministre plénipotentiaire à Athènes, Commandeur de l'Ordre des Saints Maurice et Lazare, Grand Officier de la Couronne d'Italie;

SA MAJESTÉ L'EMPEREUR DU JAPON :

M. Kentaro OTCHIAI, Jusammi, Première classe de l'Ordre du Soleil Levant, Ambassadeur extraordinaire et plénipotentiaire à Rome;

SA MAJESTÉ LE ROI DES HELLÈNES :

M. Eleftherios K. VENISELOS, ancien Président du Conseil des Ministres, Grand-Croix de l'Ordre du Sauveur;

M. Démètre CACLAMANOS, Ministre plénipotentiaire à Londres, Commandeur de l'Ordre du Sauveur;

SA MAJESTÉ LE ROI DE ROUMANIE :

M. Constantin I. DIAMANDY, Ministre plénipotentiaire;

M. Constantin CONTZESCO, Ministre plénipotentiaire;

SA MAJESTÉ LE ROI DES SERBES, DES CROATES ET DES SLOVÈNES :

M. le Docteur Miloutine YOVANOVITCH, Envoyé extraordinaire et Ministre plénipotentiaire à Berne;

LE GOUVERNEMENT DE LA GRANDE ASSEMBLÉE NATIONALE DE TURQUIE :

ISMET Pacha, Ministre des Affaires étrangères, Député d'Andrinople;

Le Docteur RIZA NOUR Bey, Ministre des Affaires sanitaires et de l'Assistance sociale, Député de Sinope;

HASSAN Bey, ancien Ministre, Député de Trébizonde;

LESQUELS, après avoir exhibé leurs pleins pouvoirs reconnus en bonne et due forme, ont convenu des dispositions suivantes :

PARTIE I.

CLAUSES POLITIQUES.

ARTICLE 1.

A dater de la mise en vigueur du présent Traité, l'état de paix sera définitivement rétabli entre l'Empire britannique, la France, l'Italie, le Japon, la Grèce, la Roumanie, l'Etat Serbe-Croate-Slovène, d'une part, et la Turquie, d'autre part, ainsi qu'entre leurs ressortissants respectifs.

De part et d'autre il y aura relations officielles et, sur les territoires respectifs, les agents diplomatiques et consulaires recevront, sans préjudice d'accords particuliers à intervenir, le traitement consacré par les principes généraux du droit des gens.

SECTION I.

1. CLAUSES TERRITORIALES.

ARTICLE 2.

De la Mer Noire à la Mer Egée, la frontière de la Turquie est fixée comme il suit (voir Carte n° 1) :

1° *Avec la Bulgarie :*

De l'embouchure de la Rezvaya jusqu'à la Maritza, point de jonction des trois frontières de la Turquie, de la Bulgarie et de la Grèce :

la frontière Sud de la Bulgarie, telle qu'elle est actuellement délimitée ;

2° *Avec la Grèce :*

De là jusqu'au confluent de l'Arda et de la Maritza :
le cours de la Maritza;

De là vers l'amont de l'Arda, jusqu'à un point sur cette rivière à fixer sur le terrain dans le voisinage immédiat du village de Tchörek-Keuy :

le cours de l'Arda ;

De là dans la direction du Sud-Est jusqu'à un point situé sur la Maritza, à 1 kilomètre en aval de Bosna-Keuy :

une ligne sensiblement droite laissant en Turquie le village de Bosna-Keuy. Le village de Tchörek-Keuy sera attribué à la Grèce ou à la Turquie, selon que la majorité de la population y sera reconnue par la Commission prévue à l'Article 5 comme étant grecque ou turque, la population immigrée dans ce village postérieurement au 11 octobre 1922 n'entrant pas en ligne de compte ;

De là jusqu'à la Mer Egée :

le cours de la Maritza.

ARTICLE 3.

De la Mer Méditerranée à la frontière de Perse, la frontière de la Turquie est fixée comme il suit :

1° *Avec la Syrie :*

La frontière définie dans l'Article 8 de l'Accord franco-turc du 20 octobre 1921 ;

2° *Avec l'Irak :*

La frontière entre la Turquie et l'Irak sera déterminée à l'amiable entre la Turquie et la Grande-Bretagne dans un délai de neuf mois.

A défaut d'accord entre les deux Gouvernements dans le délai prévu, le litige sera porté devant le Conseil de la Société des Nations.

Les Gouvernements turc et britannique s'engagent réciproquement à ce que, en attendant la décision à prendre au sujet de la frontière, il ne sera procédé à aucun mouvement militaire ou autre, de nature à apporter un changement quelconque dans l'état actuel des territoires dont le sort définitif dépendra de cette décision.

ARTICLE 4.

Les frontières décrites par le présent Traité sont tracées sur les cartes au 1/1,000,000* annexées au présent Traité. En cas de divergence entre le texte et la carte, c'est le texte qui fera foi.

ARTICLE 5.

Une Commission de délimitation sera chargée de tracer, sur le terrain, la frontière décrite dans l'Article 2-2°. Cette Commission sera composée de représentants de la Grèce et de la Turquie, à raison d'un par chaque Puissance, et d'un Président choisi par eux parmi les ressortissants d'une tierce Puissance.

Elle s'efforcera, dans tous les cas, de suivre au plus près les définitions données dans le présent Traité, en tenant compte, autant que possible, des limites administratives et des intérêts économiques locaux.

Les décisions de la Commission seront prises à la majorité des voix et seront obligatoires pour les Parties intéressées.

Les dépenses de la Commission seront supportées également par les Parties intéressées.

ARTICLE 6.

En ce qui concerne les frontières définies par le cours d'un fleuve ou d'une rivière et non par ses rives, les termes « cours » ou « chenal » employés dans les descriptions du présent Traité signifient : d'une part, pour les fleuves non navigables, la ligne médiane du cours d'eau ou de son bras principal, et d'autre part, pour les fleuves navigables, la ligne médiane du chenal de navigation principal. Toutefois, il appartiendra à la Commission de délimitation de spécifier si la ligne frontière suivra, dans ses déplacements éventuels, le cours ou le chenal ainsi défini, ou si elle sera déterminée d'une manière définitive par la position du cours ou du chenal au moment de la mise en vigueur du présent Traité.

A moins de stipulations contraires du présent Traité, les frontières maritimes comprennent les îles et les îlots situés à moins de trois milles de la côte.

ARTICLE 7.

Les Etats intéressés s'engagent à fournir à la Commission de délimitation tous documents nécessaires à ses travaux, notamment des copies authentiques des procès-verbaux de délimitation des frontières actuelles ou anciennes, toutes les cartes à grande échelle existantes, les données géodésiques, les levés exécutés et non publiés, les renseignements sur les divagations des cours d'eau frontières. Les cartes, données géodésiques et levés, même non publiés, se trouvant en la possession des autorités turques, devront être remis à Constantinople, dans le plus bref délai possible dès la mise en vigueur du présent Traité, au Président de la Commission.

Les Etats intéressés s'engagent, en outre, à prescrire aux autorités locales de communiquer à la Commission tous documents, notamment les plans, cadastres et livres fonciers, et de lui fournir sur sa demande tous renseignements sur la propriété, les courants économiques et autres informations nécessaires.

ARTICLE 8.

Les Etats intéressés s'engagent à prêter assistance à la Commission de délimitation, soit directement, soit par l'entremise des autorités locales, pour tout ce qui concerne le transport, le logement, la main-d'œuvre, les matériaux (poteaux, bornes) nécessaires à l'accomplissement de sa mission.

En particulier, le Gouvernement turc s'engage à fournir, s'il est nécessaire, le personnel technique propre à assister la Commission de délimitation dans l'accomplissement de sa tâche.

ARTICLE 9.

Les Etats intéressés s'engagent à faire respecter les repères trigonométriques, signaux, poteaux ou bornes frontières placés par la Commission.

ARTICLE 10.

Les bornes seront placées à distance de vue l'une de l'autre; elles seront numérotées; leur emplacement et leur numéro seront portés sur un document cartographique.

ARTICLE 11.

Les procès-verbaux définitifs de délimitation, les cartes et documents annexés seront établis en triple orginal, dont deux seront transmis aux Gouvernements des Etats limitrophes et le troisième sera transmis au Gouvernement de la République française, qui en délivrera des expéditions authentiques aux Puissances signataires du présent Traité.

ARTICLE 12.

La décision prise le 13 février 1914 par la Conférence de Londres, en exécution des Articles 5 du Traité de Londres du 17/30 mai 1913 et 15 du Traité d'Athènes du 1/14 novembre 1913, ladite décision notifiée au Gouvernement hellénique le 13 février 1914, concernant la souveraineté de la Grèce sur les îles de la Méditerranée orientale, autres que les îles de Imbros, Tenedos et les îles aux Lapins, notamment les îles de Lemnos, Samothrace, Mitylène, Chio, Samos et Nikaria, est confirmée, sous réserve des stipulations du présent Traité relatives aux îles placées sous la souveraineté de l'Italie et visées à l'Article 15. Sauf stipulation contraire du présent Traité, les îles situées à moins de trois milles de la côte asiatique restent placées sous la souveraineté turque.

ARTICLE 13.

En vue d'assurer le maintien de la paix, le Gouvernement hellénique s'engage à observer les mesures suivantes dans les îles de Mitylène, Chio, Samos et Nikaria :

1° Aucune base navale ni aucune fortification ne seront établies dans lesdites îles.

2° Il sera interdit à l'aviation militaire grecque de survoler le territoire de la côte d'Anatolie.

Réciproquement, le Gouvernement turc interdira à son aviation militaire de survoler lesdites îles.

3° Les forces militaires helléniques dans lesdites îles seront limitées au contingent normal, appelé pour le service militaire, qui pourra être instruit sur place, ainsi qu'à un effectif de gendarmerie et de police proportionné à l'effectif de la gendarmerie et de la police existant sur l'ensemble du territoire hellénique.

ARTICLE 14.

Les îles de Imbros et Tenedos, demeurant sous la souveraineté turque, jouiront d'une organisation administrative spéciale composée d'éléments locaux et donnant toute garantie à la population indigène non-musulmane, en ce qui concerne l'administration locale ainsi que la protection des personnes et des biens. Le maintien de l'ordre y sera assuré par une police qui sera recrutée parmi la population indigène par les soins et placée sous les ordres de l'administration locale ci-dessus prévue.

Les stipulations conclues ou à conclure entre la Grèce et la Turquie concernant l'échange des populations grecques et turques ne seront pas applicables aux habitants des îles de Imbros et Tenedos.

ARTICLE 15.

La Turquie renonce en faveur de l'Italie à tous ses droits et titres sur les îles ci-après énumérées, savoir : Stampalia (Astropalia), Rhodes (Rhodos), Calki (Kharki), Scarpanto, Casos (Casso), Piscopis (Tilos), Misiros (Nisyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi), et Cos (Kos), actuellement occupées par l'Italie et les îlots qui en dépendent, ainsi que sur l'île de Castellorizo (voir Carte n° 2).

ARTICLE 16.

La Turquie déclare renoncer à tous droits et titres, de quelque nature que ce soit, sur ou concernant les territoires situés au delà des frontières prévues par le présent Traité et sur les îles autres que celles sur lesquelles la souveraineté lui est reconnue par ledit Traité, le sort de ces territoires et îles étant réglé ou à régler par les intéressés.

Les dispositions du présent Article ne portent pas atteinte aux stipulations particulières intervenues ou à intervenir entre la Turquie et les pays limitrophes en raison de leur voisinage.

ARTICLE 17.

L'effet de la renonciation par la Turquie à tous droits et titres sur l'Egypte et sur le Soudan prendra date du 5 novembre 1914.

ARTICLE 18.

La Turquie est libérée de tous engagements et obligations à l'égard des emprunts ottomans garantis sur le tribut d'Egypte, savoir les emprunts de 1855, 1891 et 1894. Les payements annuels effectués par l'Egypte pour le service de ces trois emprunts constituant aujourd'hui une partie du service de la Dette Publique Egyptienne, l'Egypte est libérée de toutes autres obligations en ce qui concerne la Dette Publique Ottomane.

ARTICLE 19.

Des stipulations ultérieures, à intervenir dans des conditions à déterminer entre les Puissances intéressées, régleront les questions naissant de la reconnaissance de l'Etat égyptien, auquel ne s'appliquent pas les dispositions du présent Traité relatives aux territoires détachés de la Turquie en vertu dudit Traité.

ARTICLE 20.

La Turquie déclare reconnaître l'annexion de Chypre proclamée par le Gouvernement britannique le 5 novembre 1914.

ARTICLE 21.

Les ressortissants turcs, établis dans l'île de Chypre à la date du 5 novembre 1914, acquerront, dans les conditions de la loi locale, la nationalité britannique, et perdront de ce chef la nationalité turque. Toutefois, ils auront la faculté, pendant une période de deux ans à dater de la mise en vigueur du présent Traité, d'opter pour la nationalité turque; dans ce cas, ils devront quitter l'île de Chypre dans les douze mois qui suivront l'exercice du droit d'option.

Les ressortissants turcs, établis dans l'île de Chypre à la date de la mise en vigueur du présent Traité, et qui, à cette date, auront acquis ou seront en voie d'acquérir la nationalité britannique sur demande faite dans les conditions de la loi locale, perdront également de ce chef la nationalité turque.

Il demeure entendu que le Gouvernement de Chypre aura la faculté de refuser la nationalité britannique aux personnes qui avaient acquis, sans le consentement du Gouvernement turc, une nationalité autre que la nationalité turque.

ARTICLE 22.

Sans préjudice des dispositions générales de l'Article 27, la Turquie déclare reconnaître l'abolition définitive de tous droits et privilèges de quelque nature que ce soit, dont elle jouissait en Libye en vertu du Traité de Lausanne du 18 octobre 1912 et des Actes y relatifs.

2. DISPOSITIONS SPÉCIALES.

ARTICLE 23.

Les Hautes Parties contractantes sont d'accord pour reconnaître et déclarer le principe de la liberté de passage et de navigation, par mer et dans les airs, en temps de paix comme en temps de guerre, dans le détroit des Dardanelles, la Mer de Marmara et le Bosphore, ainsi qu'il est prévu dans la Convention spéciale conclue à la date de ce jour, relativement au régime des Détroits. Cette Convention aura même force et valeur au regard des Hautes Parties ici contractantes que si elle figurait dans le présent Traité.

ARTICLE 24.

La Convention spéciale, conclue à la date de ce jour, relativement au régime de la frontière décrite dans l'Article 2 du présent Traité, aura même force et valeur au regard des Hautes Parties ici contractantes que si elle figurait dans le présent Traité.

ARTICLE 25.

La Turquie s'engage à reconnaître la pleine valeur des Traités de paix et Conventions additionnelles conclues par les autres Puissances contractantes avec les Puissances ayant combattu aux côtés de la Turquie, à agréer les dispositions qui ont été ou seront prises concernant les territoires de l'ancien Empire allemand, de l'Autriche, de la Hongrie et de la Bulgarie, et à reconnaître les nouveaux Etats dans les frontières ainsi fixées.

ARTICLE 26.

La Turquie déclare dès à présent reconnaître et agréer les frontières de l'Allemagne, de l'Autriche, de la Bulgarie, de la Grèce, de la Hongrie, de la Pologne, de la Roumanie, de l'Etat Serbe-Croate-Slovène et de l'Etat Tchéco-Slovaque, telles que ces frontières ont été ou seront fixées par les Traités visés à l'Article 25 ou par toutes conventions complémentaires.

ARTICLE 27.

Aucun pouvoir ou juridiction en matière politique, législative ou administrative, ne seront exercés, pour quelque motif que ce soit, par le Gouvernement ou les autorités de la Turquie hors du territoire turc sur les ressortissants d'un territoire placé sous la souveraineté ou le protectorat des autres Puissances signataires du présent Traité et sur les ressortissants d'un territoire détaché de la Turquie.

Il demeure entendu qu'il n'est pas porté atteinte aux attributions spirituelles des autorités religieuses musulmanes.

ARTICLE 28.

Les Hautes Parties contractantes déclarent accepter, chacune en ce qui la concerne, l'abolition complète des Capitulations en Turquie à tous les points de vue.

ARTICLE 29.

Les Marocains ressortissants français et les Tunisiens seront à tous égards soumis, en Turquie, au même régime que les autres ressortissants français.

Les ressortissants libyens seront à tous égards soumis, en Turquie, au même régime que les autres ressortissants italiens.

Les dispositions du présent Article ne préjugent pas de la nationalité des personnes originaires de Tunisie, de Libye et du Maroc établies en Turquie.

Réciproquement, les ressortissants turcs bénéficieront, dans les pays dont les habitants jouissent des dispositions des alinéas 1 et 2, du même régime qu'en France et en Italie respectivement.

Le régime auquel seront soumises en Turquie les marchandises en provenance ou à destination des pays dont les habitants jouissent des dispositions de l'alinéa 1, et, réciproquement, le régime auquel seront soumises dans lesdits pays les marchandises en provenance ou à destination de la Turquie, seront déterminés d'accord entre le Gouvernement français et le Gouvernement turc.

SECTION II

NATIONALITÉ.

ARTICLE 30.

Les ressortissants turcs établis sur les territoires qui, en vertu des dispositions du présent Traité, sont détachés de la Turquie, deviendront, de plein droit et dans les conditions de la législation locale, ressortissants de l'Etat auquel le territoire est transféré.

ARTICLE 31.

Les personnes âgées de plus de 18 ans, perdant leur nationalité turque et acquérant de plein droit une nouvelle nationalité en vertu de l'Article 30, auront la faculté, pendant une période de deux ans à dater de la mise en vigueur du présent Traité, d'opter pour la nationalité turque.

ARTICLE 32.

Les personnes, âgées de plus de 18 ans, qui sont établies sur un territoire détaché de la Turquie en conformité du présent Traité, et qui y diffèrent, par la race, de la majorité de la population dudit territoire, pourront, dans le délai de deux ans à dater de la mise en vigueur du présent Traité, opter pour la nationalité d'un des Etats où la majorité de la population est de la même race que la personne exerçant le droit d'option, et sous réserve du consentement de cet Etat.

ARTICLE 33.

Les personnes ayant exercé le droit d'option, conformément aux dispositions des Articles 31 et 32, devront, dans les douze mois qui suivront, transporter leur domicile dans l'Etat en faveur duquel elles auront opté.

Elles seront libres de conserver les biens immobiliers qu'elles possèdent sur le territoire de l'autre Etat où elles auraient eu leur domicile antérieurement à leur option.

Elles pourront emporter leurs biens meubles de toute nature. Il ne leur sera imposé, de ce fait, aucun droit ou taxe, soit de sortie, soit d'entrée.

ARTICLE 34.

Sous réserve des accords qui pourraient être nécessaires entre les Gouvernements exerçant l'autorité dans les pays détachés de la Turquie et les Gouvernements des pays où ils sont établis, les ressortissants turcs, âgés de plus de 18 ans, originaires d'un territoire détaché de la Turquie en vertu du présent Traité, et qui, au moment de la mise en vigueur de celui-ci, sont établis à l'étranger, pourront opter pour la nationalité en vigueur dans le territoire dont ils sont originaires, s'ils se rattachent par leur race à la majorité de la population de ce territoire, et si le Gouvernement y exerçant l'autorité y consent. Ce droit d'option devra être exercé dans le délai de deux ans à dater de la mise en vigueur du présent Traité.

ARTICLE 35.

Les Puissances contractantes s'engagent à n'apporter aucune entrave à l'exercice du droit d'option prévu par le présent Traité ou par les Traités de paix conclus avec l'Allemagne, l'Autriche, la Bulgarie ou la Hongrie, ou par un Traité conclu par lesdites Puissances autres que la Turquie, ou l'une d'elles, avec la Russie, ou entre elles-mêmes, et permettant aux intéressés d'acquérir toute autre nationalité qui leur serait ouverte.

ARTICLE 36.

Les femmes mariées suivront la condition de leurs maris et les enfants âgés de moins de 18 ans suivront la condition de leurs parents pour tout ce qui concerne l'application des dispositions de la présente Section.

SECTION III.

PROTECTION DES MINORITÉS.

ARTICLE 37.

La Turquie s'engage à ce que les stipulations contenues dans les Articles 38 à 44 soient reconnues comme lois fondamentales, à ce qu'aucune loi, aucun règlement, ni aucune action officielle ne soient en contradiction ou en opposition avec ces stipulations et à ce qu'aucune loi, aucun règlement ni aucune action officielle ne prévalent contre elles.

Article 38.

Le Gouvernement turc s'engage à accorder à tous les habitants de la Turquie pleine et entière protection de leur vie et de leur liberté, sans distinction de naissance, de nationalité, de langue, de race ou de religion.

Tous les habitants de la Turquie auront droit au libre exercice, tant public que privé, de toute foi, religion ou croyance dont la pratique ne sera pas incompatible avec l'ordre public et les bonnes mœurs.

Les minorités non-musulmanes jouiront pleinement de la liberté de circulation et d'émigration sous réserve des mesures s'appliquant, sur la totalité ou sur une partie du territoire, à tous les ressortissants turcs et qui seraient prises par le Gouvernement turc pour la défense nationale ou pour le maintien de l'ordre public.

Article 39.

Les ressortissants turcs appartenant aux minorité non-musulmanes jouiront des mêmes droits civils et politiques que les musulmans.

Tous les habitants de la Turquie, sans distinction de religion, seront égaux devant la loi.

La différence de religion, de croyance ou de confession ne devra nuire à aucun ressortissant turc en ce qui concerne la jouissance des droits civils et politiques, notamment pour l'admission aux emplois publics, fonctions et honneurs ou l'exercice des différentes professions et industries.

Il ne sera édicté aucune restriction contre le libre usage par tout ressortissant turc d'une langue quelconque, soit dans les relations privées ou de commerce, soit en matière de religion, de presse ou de publications de toute nature, soit dans les réunions publiques.

Nonobstant l'existence de la langue officielle, des facilités appropriées seront données aux ressortissants turcs de langue autre que le turc, pour l'usage oral de leur langue devant les tribunaux.

Article 40.

Les ressortissants turcs appartenant à des minorités non-musulmanes jouiront du même traitement et des mêmes garanties en droit et en fait que les autres ressortissants turcs. Ils auront notamment un droit égal à créer, diriger et contrôler à leurs frais toutes institutions charitables, religieuses ou sociales, toutes écoles et autres établissements d'enseignement et d'éducation, avec le droit d'y faire librement usage de leur propre langue et d'y exercer librement leur religion.

ARTICLE 41.

En matière d'enseignement public, le Gouvernement turc accordera dans les villes et districts où réside une proportion considérable de ressortissants non-musulmans, des facilités appropriées pour assurer que dans les écoles primaires l'instruction soit donnée dans leur propre langue aux enfants de ces ressortissants turcs. Cette stipulation n'empêchera pas le Gouvernement turc de rendre obligatoire l'enseignement de la langue turque dans lesdites écoles.

Dans les villes ou districts où existe une proportion considérable de ressortissants turcs appartenant à des minorités non-musulmanes, ces minorités se verront assurer une part équitable dans le bénéfice et l'affectation des sommes qui pourraient être attribuées sur les fonds publics par le budget de l'Etat, les budgets municipaux ou autres, dans un but d'éducation, de religion ou de bienfaisance.

Les fonds en question seront versés aux représentants qualifiés des établissements et institutions intéressés.

ARTICLE 42.

Le Gouvernement turc agrée de prendre à l'égard des minorités non-musulmanes, en ce qui concerne leur statut familial ou personnel, toutes dispositions permettant de régler ces questions selon les usages de ces minorités.

Ces dispositions seront élaborées par des commissions spéciales composées en nombre égal de représentants du Gouvernement turc et de représentants de chacune des minorités intéressées. En cas de divergence, le Gouvernement turc et le Conseil de la Société des Nations nommeront d'un commun accord un surarbitre choisi parmi les jurisconsultes européens.

Le Gouvernement turc s'engage à accorder toute protection aux églises, synagogues, cimetières et autres établissements religieux des minorités précitées. Toutes facilités et autorisations seront données aux fondations pieuses et aux établissements religieux et charitables des mêmes minorités actuellement existant en Turquie, et le Gouvernement turc ne refusera pas, pour la création de nouveaux établissements religieux et charitables, aucune des facilités nécessaires qui sont garanties aux autres établissements privés de cette nature.

ARTICLE 43.

Les ressortissants turcs, appartenant aux minorités non-musulmanes, ne seront pas astreints à accomplir un acte quelconque constituant une violation de leur foi ou de leurs pratiques religieuses, ni frappés d'aucune incapacité s'ils refusent de comparaître devant les tribunaux ou d'accomplir quelque acte légal le jour de leur repos hebdomadaire.

Toutefois, cette disposition ne dispensera pas ces ressortissants turcs des obligations imposées à tous autres ressortissants turcs en vue du maintien de l'ordre public.

Article 44.

La Turquie convient que, dans la mesure où les articles précédents de la présent Section affectent les ressortissants non-musulmans de la Turquie, ces stipulations constituent des obligations d'intérêt international et soient placées sous la garantie de la Société des Nations. Elles ne pourront être modifiées sans l'assentiment de la majorité du Conseil de la Société des Nations. L'Empire britannique, la France, l'Italie et le Japon s'engagent, par les présentes, à ne pas refuser leur assentiment à toute modification desdits articles qui serait consentie en due forme par la majorité du Conseil de la Société des Nations.

La Turquie agrée que tout membre du Conseil de la Société des Nations aura le droit de signaler à l'attention du Conseil toute infraction ou danger d'infraction à l'une quelconque de ces obligations, et que le Conseil pourra procéder de telle façon et donner telles instructions qui paraîtront appropriées et efficaces dans la circonstance.

La Turquie agrée, en outre, qu'en cas de divergence d'opinion sur des questions de droit ou de fait concernant ces articles, entre le Gouvernement turc et l'une quelconque des autres Puissances signataires ou toute autre Puissance, membre du Conseil de la Société des Nations, cette divergence sera considérée comme un différend ayant un caractère international selon les termes de l'Article 14 du Pacte de la Société des Nations. Le Gouvernement turc agrée que tout différend de ce genre sera, si l'autre partie le demande, déféré à la Cour permanente de Justice internationale. La décision de la Cour permanente sera sans appel et aura la même force et valeur qu'une décision rendue en vertu de l'Article 13 du Pacte.

Article 45.

Les droits reconnus par les stipulations de la présente Section aux minorités non-musulmanes de la Turquie, sont également reconnus par la Grèce à la minorité musulmane se trouvant sur son territoire.

PARTIE II.

CLAUSES FINANCIÈRES.

SECTION I.

DETTE PUBLIQUE OTTOMANE.

ARTICLE 46.

La Dette Publique Ottomane, telle qu'elle est définie dans le Tableau annexé à la présente Section, sera répartie dans les conditions stipulées dans la présente Section entre la Turquie, les Etats en faveur desquels des territoires ont été détachés de l'Empire Ottoman à la suite des guerres balkaniques de 1912-1913, les Etats auxquels les îles visées par les Articles 12 et 15 du présent Traité et le territoire visé par le dernier alinéa du présent Article ont été attribuées; et enfin les Etats nouvellement créés sur les territoires asiatiques détachés de l'Empire Ottoman en vertu du présent Traité. Tous les Etats indiqués ci-dessus devront, en outre, participer dans les conditons indiquées dans la présente Section aux charges annuelles afférentes au service de la Dette Publique Ottomane à partir des dates prévues par l'Article 53.

A compter des dates fixées par l'Article 53, la Turquie ne pourra en aucune façon être rendue responsable des parts contributives mises à la charge des autres Etats.

Le territoire de Thrace qui, au 1er août 1914, était sous la souveraineté ottomane et qui se trouve en dehors des limites de la Turquie fixées par l'Article 2 du présent Traité sera, en ce qui concerne la répartition de la Dette Publique Ottomane, considéré comme détaché de l'Empire Ottoman en vertu dudit Traité.

ARTICLE 47.

Le Conseil de la Dette Publique Ottomane devra, dans le délai de trois mois à dater de la mise en vigueur du présent Traité, déterminer sur les bases établies par les Articles 50 et 51 le montant des annuités afférentes aux emprunts visés à la Partie A du Tableau annexé à la présente Section et incombant à chacun des Etats intéressés et leur notifier ce montant.

Ces Etats auront la faculté d'envoyer à Constantinople des délégués pour suivre à cet égard les travaux du Conseil de la Dette Publique Ottomane.

Le Conseil de la Dette remplira les fonctions qui sont prévues par l'Article 134 du Traité de paix du 27 novembre 1919 avec la Bulgarie.

Tous différends pouvant surgir entre les parties intéressées relativement à l'application des principes formulés dans le présent Article, seront déférés, un mois au plus tard après la notification prévue à l'alinéa premier, à un arbitre que le Conseil de la Société des Nations sera prié de désigner et qui devra statuer dans un délai maximum de trois mois. Les honoraires de l'arbitre seront fixés par le Conseil de la Société des Nations et mis, ainsi que les autres frais d'arbitrage, à la charge des parties intéressées. Les décisions de l'arbitre seront souveraines. Le renvoi audit arbitre ne suspendra pas le payement des annuités.

ARTICLE 48.

Les Etats autres que la Turquie entre lesquels la Dette Publique Ottomane, telle qu'elle est définie dans la Partie A du Tableau annexé à la présente Section, sera répartie, devront, dans le délai de trois mois à compter du jour où la notification leur aura été faite aux termes de l'Article 47 de la part qui leur incombe respectivement dans les charges annuelles visées audit Article, donner au Conseil de la Dette des gages suffisants pour garantir le payement de leur part. Dans le cas où ces gages n'auraient pas été constitués dans le délai sus-indiqué, ou en cas de divergence sur la convenance des gages constitués, il pourra être fait appel au Conseil de la Société des Nations par tout Gouvernement signataire du présent Traité.

Le Conseil de la Société des Nations pourra confier aux organisations financières internationales existant dans les pays autres que la Turquie entre lesquels la Dette est répartie, la perception des revenus donnés en gage. Les décisions du Conseil de la Société des Nations seront souveraines.

ARTICLE 49.

Dans le délai d'un mois à compter du jour où il aura été procédé à la détermination définitive, conformément aux stipulations de l'Article 47, du montant des annuités incombant à chacun des Etats intéressés, une commission sera réunie à Paris en vue de fixer les modalités de la répartition du capital nominal de la Dette Publique Ottomane, telle qu'elle est définie dans la Partie A du Tableau annexé à la présente Section. Cette répartition devra être faite d'après les proportions adoptées pour le partage des annuités et en tenant compte des stipulations des conventions d'emprunt ainsi que des dispositions de la présente Section.

La Commission prévue à l'alinéa 1er sera composée d'un représentant du Gouvernement turc, d'un représentant du Conseil de la Dette Publique Ottomane, d'un représentant de la dette autre que la Dette Unifiée et les Lots turcs, ainsi que du représentant que chacun des Etats intéressés aura la faculté de désigner. Toutes questions sur lesquelles la Commission ne pourrait arriver à un accord, seront déférées à l'arbitre prévu par l'Article 47, alinéa 4.

Au cas où la Turquie déciderait de créer de nouveaux titres en représentation de sa part, la répartition du capital de la Dette sera faite en premier lieu, en ce qui concerne la Turquie, par un comité composé du représentant du Gouvernement turc, du représentant du Conseil de la Dette Publique Ottomane et du représentant de la dette autre que la Dette Unifiée et les Lots turcs. Les titres nouvellement créés seront remis à la Commission, qui en assurera la délivrance aux porteurs dans des conditions constatant la libération de la Turquie ainsi que le droit des porteurs à l'égard des autres Etats auxquels incombe une part de la Dette Publique Ottomane. Les titres émis en représentation de la part de chaque Etat dans la Dette Publique Ottomane seront exempts sur le territoire des Hautes Parties contractantes de tous droits de timbre ou autres taxes qui résulteraient de cette émission.

Le payement des annuités incombant à chacun des Etats intéressés ne pourra pas être différé par suite des dispositions du présent Article relatives à la répartition du capital nominal.

ARTICLE 50.

La réparation des charges annuelles visées à l'Article 47 et celle du capital nominal de la Dette Publique Ottomane, dont il est fait mention à l'Article 49, seront effectuées de la manière suivante :

1° Les emprunts antérieurs au 17 octobre 1912 et les charges y afférentes seront répartis entre l'Empire ottoman tel qu'il existait à la suite des guerres balkaniques de 1912-1913, les Etats balkaniques en faveur desquels un territoire a été détaché de l'Empire ottoman à la suite desdites guerres, et les Etats auxquels les îles visées aux Articles 12 et 15 du présent Traité ont été attribuées; il sera tenu compte des changements territoriaux intervenus depuis la mise en vigueur des traités qui ont mis fin à ces guerres, ou des traités postérieurs.

2° Le solde des emprunts restant à la charge de l'Empire ottoman après cette première répartition et le solde des annuités y afférentes, augmentés des emprunts contractés par ledit Empire entre le 17 octobre 1912 et 1er novembre 1914, ainsi que des annuités y afférentes, seront répartis entre la Turquie, les Etats nouvellement créés en Asie en faveur desquels un territoire a été détaché de l'Empire ottoman en vertu du présent Traité, et l'Etat auquel le territoire visé au dernier alinéa de l'Article 46 dudit Traité a été attribué.

La répartition du capital se fera pour chaque emprunt sur le montant du capital existant à la date de la mise en vigueur du présent Traité.

ARTICLE 51.

Le montant de la part incombant à chaque Etat intéressé dans les charges annuelles de la Dette Publique Ottomane par suite de la répartition prévue à l'Article 50, sera déterminé comme il suit :

1° En ce qui concerne la répartition prévue au paragraphe 1° de l'Article 50, il sera d'abord procédé à la fixation de la part incombant à l'ensemble des îles visées aux Articles 12 et 15 et des territoires détachés de l'Empire ottoman à la suite des guerres balkaniques. Le montant de cette part devra être, par rapport à la somme totale des annuités à répartir d'après les dispositions du paragraphe 1° de l'Article 50, dans la même proportion que le revenu moyen total des îles et des territoires susmentionnés, pris en commun, par rapport au revenu moyen total de l'Empire ottoman pendant les années financières 1910-1911 et 1911-1912, y compris le produit des surtaxes douanières établies en 1907.

Le montant ainsi déterminé sera ensuite réparti entre les Etats auxquels ont été attribués les territoires visés dans l'alinéa précédent et la part qui, de ce fait, incombera à chacun de ces Etats devra être, par rapport au montant total réparti entre eux, dans la même proportion que le revenu moyen du territoire attribué à chaque Etat par rapport au revenu moyen total pendant les années financières 1910-1911 et 1911-1912 de l'ensemble des territoires détachés de l'Empire ottoman à la suite des guerres balkaniques et des îles visées aux Articles 12 et 15. Dans le calcul des revenus prévu par le présent alinéa, il ne sera pas tenu compte des recettes des douanes.

2° En ce qui concerne les territoires détachés de l'Empire ottoman en vertu du présent Traité, y compris le territoire visé au dernier alinéa de l'Article 46, le montant de la part incombant à chaque Etat intéressé devra être, par rapport à la somme totale des annuités à répartir d'après les disposiitons du paragraphe 2° de l'Article 50, dans la même proportion que le revenu moyen du territoire détaché par rapport au revenu moyen total de l'Empire ottoman pendant les années financières 1910-1911 et 1911-1912 (y compris le produit des surtaxes douanières établies en 1907), diminué de l'appoint des territoires et îles visés au paragraphe 1°.

ARTICLE 52.

Les avances prévues à la Partie B du Tableau annexé à la présente Section, seront réparties, entre la Turquie et les autres Etats visés à l'Article 46, dans les conditions suivantes :

1° En ce qui concerne les avances prévues au Tableau qui existaient au 17 octobre 1912, le montant du capital non remboursé, s'il en existe, à la date de la mise en vigueur du présent Traité, ainsi que les intérêts échus depuis les dates mentionnées au premier alinéa de l'Article 53 et les remboursements effectués depuis ces dates, seront répartis d'après les disposiitons prévues par le paragraphe 1° de l'Article 50 et par le paragraphe 1° de l'Article 51.

2° En ce qui concerne les sommes incombant à l'Empire ottoman par suite de cette première répartition et les avances prévues au Tableau qui ont été contractées par ledit Empire entre le 17 octobre 1912 et le 1er novembre 1914, le montant du capital non remboursé, s'il en existe, à la date de la mise en vigueur du présent Traité, ainsi que les intérêts échus depuis le 1er mars 1920 et les remboursements effectués depuis ladite date, seront répartis d'après les dispositions prévues par le paragraphe 2° de l'Article 50 et le paragraphe 2° de l'Article 51.

Le Conseil de la Dette Publique Ottomane devra, dans le délai de trois mois à compter de la mise en vigueur du présent Traité, déterminer le montant de la part de ces avances incombant à chacun des Etats intéressés et leur notifier ce montant.

Les sommes mises à la charge des Etats autres que la Turquie seront versées par lesdits Etats au Conseil de la Dette et seront payées par ce dernier aux créanciers ou portés par lui au crédit du Gouvernement turc jusqu'à concurrence des sommes payées par la Turquie soit comme intérêts, soit comme remboursements pour le compte desdits Etats.

Les versements prévus à l'alinéa précédent auront lieu au moyen de cinq annuités égales à compter de la mise en vigueur du présent Traité. La part desdits payements qui devra être versée aux créanciers de l'Empire ottoman, portera les intérêts stipulés dans les contrats d'avances; la part qui revient au Gouvernement turc sera versée sans intérêts.

ARTICLE 53.

Les annuités des emprunts de la Dette Publique Ottomane, telle qu'elle est définie à la Partie A du Tableau annexé à la présente Section, dues par les Etats en faveur desquels un territoire a été détaché de l'Empire ottoman à la suite des guerres balkaniques, seront exigibles à dater de la mise en vigueur des Traités qui ont consacré le transfert de ces territoires auxdits Etats. En ce qui concerne les îles visées à l'Article 12, l'annuité sera exigible à partir du 1er/14 novembre 1913, et, en ce qui concerne les îles visées à l'article 15, l'anuité sera exigible à partir du 17 octobre 1912.

Les annuités dues par les Etats nouvellement créés sur les territoires asiatiques détachés de l'Empire ottoman en vertu du présent Traité et par l'Etat auquel le territoire visé au dernier alinéa de l'Article 46 a été attribué, seront exigibles à dater du 1er mars 1920.

ARTICLE 54.

Les Bons du Trésor de 1911, 1912 et 1913, énumérés dans la Partie A du Tableau annexé à la présente Section, seront, dans le délai de dix ans à compter des dates de remboursement fixées par les contrats, remboursés avec les intérêts stipulés.

ARTICLE 55.

Les Etats visés à l'article 46, y compris la Turquie, verseront au Conseil de la Dette Publique Ottomane le montant des annuités afférentes à la part de la Dette Publique Ottomane, telle qu'elle est définie à la Partie A du Tableau annexé à la présente Section, et qui, leur incombant et devenues exigibles à partir des dates fixées à l'Article 53, sont restées en souffrance. Ce payement sera effectué sans intérêts au moyen de vingt annuités égales à compter de la mise en vigueur du présent Traité.

Le montant des annuités versées par les Etats autres que la Turquie au Conseil de la Dette sera porté, par ce dernier, jusqu'à concurrence des sommes payées par la Turquie pour le compte desdits Etats, en déduction des sommes arriérées dont la Turquie se trouverait encore redevable.

ARTICLE 56.

Le Conseil d'administration de la Dette Publique Ottomane ne comprendra plus de délégués des porteurs allemands, autrichiens et hongrois.

ARTICLE 57.

Sur le territoire des Hautes Parties contractantes, les délais de présentation de coupons d'intérêts afférents aux emprunts et avances de la Dette Publique Ottomane et des emprunts ottomans de 1855, 1891 et 1894 gagés sur le tribut d'Egypte, et les délais de présentation des titres desdits emprunts sortis au tirage en vue de leur remboursement, seront considérés comme ayant été suspendus depuis le 29 octobre 1914 jusqu'à l'expiration de trois mois après la mise en vigueur du présent Traité.

ANNEXE À LA SECTION I.

TABLEAU DE LA DETTE PUBLIQUE OTTOMANE ANTÉRIEURE AU 1^{er} NOVEMBRE 1914.

PARTIE A.

EMPRUNT. 1	DATE DU CONTRAT. 2	INTÉRÊT. 3	PÉRIODE D'AMORTISSEMENT. 4	BANQUE D'ÉMISSION. 5
		P. o/o.		
Dette unifiée	1-14/9/1903-8-21/6/1906.	4	....	
Lots turcs	5/1/1870	....	....	
Osmanié	18-30/4/1890.	4	1931	Banque impériale ottomane.
Priorité Tombac	20/4-8/5/1893	4	1954	Banque impériale ottomane.
40.000.000 fr. Chemins de fer orientaux	1-13/3/1894	4	1957	Deutsche Bank et son groupe y compris la Banque int. et 2 banques françaises.
5 % 1896	29/2-/12/3/1896	5	1946	Banque impériale ottomane.
Douanes 1902	17-29/5/1886-28/9-11/10 1902	4	1958	Banque impériale ottomane.
4 % 1903, Pêcheries	3/10/1888-21/2-6/3/1903.	4	1958	Deutsche Bank.
Bagdad, Série I	20/2-5/3/1903	4	2001	Deutsche Bank.
4 % 1904	4-17/9/1903	4	1960	Banque impériale ottomane.
4 % 1901-1905	21/11 - 4/12/1901 - 8/11 1903-25/4-8/5/1905.	4	1961	Banque impériale ottomane.
Tedjhizat-Askérié	4-17/4/1905.	4	1961	Deutsche Bank.
Bagdad, Série II	20/5-2/6/1908	4	2008	Deutsche Bank.
Bagdad, Série III	20/5-2/6/1908	4	2010	Deutsche Bank.
4 % 1908	6-19/9/1908	4	1965	Banque impériale ottomane.
4 % 1909	30/9-13/10/1909	4	1950	Banque impériale ottomane.
Soma-Panderma	20/11-3/12/1910	4	1992	Banque impériale ottomane.
Hodeida-Sanaa	24/2-9/3/1911	4	2000	Banque française.
Douanes 1911	27/10-9/11/1910	4	1952	Deutsche Bank et son groupe.
Irrigation de la plaine de Koniah	5-18/11/1913	....	1932	
Docks, arsenaux et constructions navales	19/11-2/12/1913	5 50	1943	
5 % 1914	13-26/4/1914	5	(1962)	Banque impériale ottomane.
Avance Régie des Tabacs	4/8/1913	....	....	
Bons du Trésor 5 % 1911 (achat de vaisseaux de guerre)	13/7/1911	5	1916*	Banque nationale de Turquie.
Bons du Trésor, Banque impériale ottomane, 1912	8-21/11/1912	6	1915*	Banque impériale ottomane.
Bons du Trésor, 1913, y compris les Bons émis directement	19/1-1/2/1913	5	1918*	Périer et C^{ie}.

* Voir Article 54.

PARTIE B.

AVANCES.	DATE DU CONTRAT.	INTÉRÊT.	CAPITAL NOMINAL originaire. Livres turques.
		P. o/o.	
Société de Bagdad	3/16 juin 1908	7	300,000
Administration des Phares	5/18 août 1904	5	53,000
» »	5/18 juillet 1907	7	300,000
Société du câble Constanza	27/9 octobre 1904	4	17,335
Société du Tunnel	....	....	3,000
Caisse des Orphelins	Dates diverses	....	153,147
Deutsche Bank	13/26 août 1912	5,5	33,000
Administration des Phares	3/16 avril 1913	7	500,000
Société du Chemin de fer d'Anatolie	23/5 mars 1914	6	200,000

SECTION II.

CLAUSES DIVERSES.

ARTICLE 58.

La Turquie, d'une part, et les autres Puissances contractantes (à l'exception de la Grèce), d'autre part, renoncent réciproquement à toute réclamation pécuniaire pour les pertes et dommages subis par la Turquie et lesdites Puissances ainsi que par leurs ressortissants (y compris les personnes morales), pendant la période comprise entre le 1er août 1914 et la mise en vigueur du présent Traité, et résultant soit de faits de guerre, soit de mesures de réquisition, séquestre, dispositon ou confiscation.

Toutefois, la disposition qui précède ne portera pas atteinte aux stipulations de la Partie III (Clauses économiques) du présent Traité.

La Turquie renonce en faveur des autres Parties contractantes (à l'exception de la Grèce) à tout droit sur les sommes en or transférées par l'Allemagne et l'Autriche en vertu de l'Article 259-1° du Traité de Paix du 28 juin 1919 avec l'Allemagne et de l'Article 210-1° du Traité de Paix du 10 septembre 1919 avec l'Autriche.

Sont annulées toutes obligations de payement mises à la charge du Conseil d'administration de la Dette Publique Ottomane tant par la Convention du 20 juin 1331 (3 juillet 1915) relative aux bons de monnaie turcs de la première émission, que par le texte porté au verso de ces bons.

La Turquie convient également de ne pas demander au Gouvernement britannique ni à ses ressortissants la restitution des sommes payées pour les bâtiments de guerre qui avaient été commandés en Angleterre par le Gouvernement ottoman et qui ont été réquisitionnés par le Gouvernement britannique en 1914; elle renonce à toute réclamation de ce chef.

ARTICLE 59.

La Grèce reconnaît son obligation de réparer les dommages causés en Anatolie par des actes de l'armée ou de l'administration helléniques contraires aux lois de la guerre.

D'autre part, la Turquie, prenant en considération la situation financière de la Grèce telle qu'elle résulte de la prolongation de la guerre et de ses conséquences, renonce définitivement à toute réclamation contre le Gouvernement hellénique pour des réparations.

ARTICLE 60.

Les Etats en faveur desquels un territoire a été ou est détaché de l'Empire ottoman, soit à la suite des guerres balkaniques, soit par le présent Traité, acquerront gratuitement tous biens et propriétés de l'Empire ottoman situés dans ce territoire.

Il est entendu que les biens et propriétés dont les Iradés du 26 août 1324 (8 septembre 1908), du 20 avril 1325 (2 mai 1909) ont ordonné le transfert de la Liste Civile à l'Etat ainsi que ceux qui, au 30 octobre 1918, était administrés par la Liste Civile au profit d'un service public, sont compris parmi les biens et propriétés visés à l'alinéa précédent, lesdits Etats étant subrogés à l'Empire ottoman en ce qui concerne ces biens et propriétés, les Vakoufs constitués sur ces biens devant être respectés.

Le litige surgi entre le Gouvernement hellénique et le Gouvernement turc relativement aux biens et propriétés passés de la Liste Civile à l'Etat et situés sur les territoire de l'ancien Empire ottoman transférés à la Grèce, soit à la suite des guerres balkaniques, soit postérieurement, sera soumis, selon un compromis à conclure, à un tribunal arbitral à La Haye, conformément au Protocole spécial n° 2 attaché au Traité d'Athènes du 1/14 novembre 1913.

Les dispositions du présent Article ne modifieront pas la nature juridique des biens et propriétés inscrits au nom de la Liste Civile ou administrés par elle et non visés aux alinéas 2 et 3 du présent Article.

ARTICLE 61.

Les bénéficiaires de pensions civiles et militaires turques devenus, en vertu du présent Traité, ressortissants d'un Etat autre que la Turquie, ne pourront exercer du chef de leurs pensions aucun recours contre le Gouvernement turc.

Article 62.

La Turquie reconnaît le transfert de toutes les créances que l'Allemagne, l'Autriche, la Bulgarie et la Hongrie possèdent contre elle, conformément à l'Article 261 du Traité de Paix conclu à Versailles le 28 juin 1919 avec l'Allemagne et aux articles correspondants des Traités de Paix du 10 septembre 1919 avec l'Autriche, du 27 novembre 1919 avec la Bulgarie et du 4 juin 1920 avec la Hongrie.

Les autres Puissances contractantes conviennent de libérer la Turquie des dettes qui lui incombent de ce chef.

Les créances que la Turquie possède contre l'Allemagne, l'Autriche, la Bulgarie et la Hongrie sont également transférées auxdites Puissances contractantes.

Article 63.

Le Gouvernement turc, d'accord avec les autres Puissances contractantes, déclare libérer le Gouvernement allemand des obligations contractées par celui-ci pendant la guerre d'accepter des billets émis par le Gouvernement turc à un taux de change déterminé, en payement de marchandises à exporter d'Allemagne en Turquie après la guerre.

PARTIE III.

CLAUSES ÉCONOMIQUES.

Article 64.

Dans la présente Partie, l'expression « Puissances alliées » s'entend des Puissances contractantes autres que la Turquie; les termes « ressortissants alliés » comprennent les personnes physiques, les sociétés, associations et établissements, ressortissant aux Puissances contractantes autres que la Turquie, ou à un Etat ou territoire sous le protectorat d'une desdites Puissances.

Les dispositions de la présente Partie relatives aux « ressortissants alliés » profiteront aux personnes qui, sans avoir la nationalité des Puissances alliées, ont, en raison de la protection dont elles étaient, en fait, l'objet de la part de ces Puissances, reçu des autorités ottomanes le même traitement que les ressortissants alliés et ont, de ce chef, subi des dommages.

SECTION I.

BIENS, DROITS ET INTÉRÊTS.

ARTICLE 65.

Les biens, droits et intérêts, qui existent encore et pourront être identifiés sur les territoires restés turcs à la date de la mise en vigueur du présent Traité, et qui appartiennent à des personnes étant, au 29 octobre 1914, ressortissants alliés, seront immédiatement restitués aux ayants droit, dans l'état où ils se trouvent.

Réciproquement, les biens, droits et intérêts, qui existent encore et pourront être identifiés sur les territoires placés sous la souveraineté ou le protectorat des Puissances alliées au 29 octobre 1914, ou sur des territoires détachés de l'Empire ottoman à la suite des guerres balkaniques et placés aujourd'hui sous la souveraineté desdites Puissances, et qui appartiennent à des ressortissants turcs, seront immédiatement restitués aux ayants droit, dans l'état où ils se trouvent. Il en sera de même des biens, droits et intérêts qui appartiennent à des ressortissants turcs sur les territoires détachés de l'Empire ottoman en vertu du présent Traité et qui auraient été l'objet de liquidations ou autres mesures exceptionnelles quelconques de la part des autorités des Puissances alliées.

Tous biens, droits et intérêts, qui sont situés sur un territoire détaché de l'Empire ottoman en vertu du présent Traité et qui, après avoir été l'objet d'une mesure exceptionnelle de guerre par le Gouvernement ottoman, sont actuellement entre les mains de la Puissance contractante exerçant l'autorité sur ledit territoire, et qui peuvent être identifiés, seront restitués à leur légitime propriétaire, dans l'état où ils se trouvent. Il en sera de même des biens immobiliers qui auraient été liquidés par la Puissance contractante exerçant l'autorité sur ledit territoire. Toutes autres revendications entre particuliers seront soumises à la juridiction compétente locale.

Tous litiges relatifs à l'identité ou à la restitution des biens réclamés seront soumis au Tribunal Arbitral Mixte prévu dans la Section V de la présente Partie.

ARTICLE 66.

Pour l'exécution des dispositions de l'Article 65, alinéas 1 et 2, les Hautes Parties contractantes remettront, par la procédure la plus rapide. les ayants droit en la possession de leurs biens, droits et intérêts, libres des charges ou servitudes dont ceux-ci auraient été grevés sans le consentement desdits ayants droit. Il appartiendra au Gouvernement de la Puissance effectuant la restitution, de pourvoir à l'indemnisation des tiers qui auraient acquis directement ou indirectement dudit Gouvernement et qui se trouveraient lésés par cette restitution. Les différends pouvant s'élever au sujet de cette indemnisation seront de la compétence des tribunaux de droit commun.

Dans tous les autres cas, il appartiendra aux tiers lésés d'agir contre qui de droit pour être indemnisés.

A cet effet, tous actes de disposition ou autres mesures exceptionnelles de guerre auxquelles les Hautes Parties contractantes auraient procédé à l'égard des biens, droits et intérêts ennemis, seront immédiatement levés et arrêtés s'il s'agit d'une liquidation non encore terminée. Les propriétaires réclamants recevront satisfaction par la restitution immédiate de leurs biens, droits et intérêts, dès que ceux-ci auront été identifiés.

Au cas où, à la date de la signature du présent Traité, les biens, droits et intérêts, dont la restitution est prévue par l'Article 65, se trouveraient avoir été liquidés par les autorités de l'une des Hautes Parties contractantes, celle-ci se trouvera libérée de l'obligation de restituer lesdits biens, droits et intérêts par le payement à leur propriétaire du produit de la liquidation. Au cas où, sur la demande du propriétaire, le Tribunal Arbitral Mixte prévu à la Section V estimerait que la liquidation n'a pas été effectuée dans des conditions assurant la réalisation d'un juste prix, il pourra, à défaut d'accord entre les parties, augmenter le produit de la liquidation de telle somme qu'il jugera équitable. Lesdits biens, droits et intérêts seront restitués si le payement n'est pas effectué dans un délai de deux mois à compter de l'accord avec le propriétaire ou de la décision du Tribunal Arbitral Mixte visé ci-dessus.

ARTICLE 67.

La Grèce, la Roumanie, l'Etat Serbe-Croate-Slovène d'une part et la Turquie d'autre part, s'engagent à faciliter réciproquement, tant par des mesures administratives appropriées que par la livraison de tous documents y afférents, la recherche sur leur territoire et la restitution des objets mobiliers de toutes sortes enlevés, saisis ou séquestrés par leurs armées et leurs administrations sur le territoire de la Turquie ou respectivement sur le territoire de la Grèce, de la Roumanie et de l'Etat Serbe-Croate-Slovène et qui se trouvent actuellement sur ce territoire.

La recherche et la restitution s'effectueront aussi pour les objets susvisés saisis ou séquestrés par les armées et administrations allemandes, austro-hongroises ou bulgares, sur le territoire de la Grèce, de la Roumanie ou de l'Etat Serbe-Croate-Slovène, et qui auraient été attribués à la Turquie ou à ses ressortissants, ainsi que pour les objets saisis ou séquestrés par les armées grecques, roumaines ou serbes sur le territoire de la Turquie et qui auraient été attribués à la Grèce, à la Roumanie ou à l'Etat Serbe-Croate-Slovène ou à leurs ressortissants.

Les requêtes afférentes à ces recherches et restitutions seront présentées dans un délai de six mois à dater de la mise en vigueur du présent Traité.

ARTICLE 68.

Les dettes résultant des contrats passés, dans les régions occupées en Turquie par l'armée grecque, entre les autorités et administrations helléniques, d'une part, et des ressortissants turcs, de l'autre, seront payées par le Gouvernement hellénique dans les conditions prévues par lesdits contrats.

ARTICLE 69.

Il ne sera perçu sur les ressortissants alliés ou sur leurs biens, au titre des exercices antérieurs à l'exercice 1922-1923, aucun impôt, taxe ou surtaxe auxquels, en vertu du statut dont ils jouissaient au 1er août 1914, les ressortissants alliés et leurs biens n'étaient pas assujettis.

Au cas où des sommes auraient été perçues après le 15 mai 1923 au titre d'exercices antérieurs à l'exercice 1922-1923, le montant en sera remboursé aux ayants droit dès la mise en vigueur du présent Traité.

Aucun recours ne pourra être exercé en ce qui concerne les sommes encaissées antérieurement au 15 mai 1923.

ARTICLE 70.

Les demandes fondées sur les Articles 65, 66 et 69 devront être introduites auprès des autorités compétentes dans le délai de six mois, et, à défaut d'accord, auprès du Tribunal Arbitral Mixte dans le délai de douze mois à partir de la mise en vigueur du présent Traité.

ARTICLE 71.

L'Empire britannique, la France, l'Italie, la Roumanie et l'Etat serbe-croate-slovène, ou leurs ressortissants, ayant introduit des réclamations ou actions auprès du Gouvernement ottoman au sujet de leurs biens, droits et intérêts antérieurement au 29 octobre 1914, les dispositions de la présente Section ne porteront point préjudice à ces réclamations ou actions. Il en sera de même des réclamations ou actions introduites auprès des Gouvernements britannique, français, italien, roumain et serbe-croate-slovène par le Gouvernement ottoman ou ses ressortissants. Ces réclamations ou actions seront poursuivies auprès du Gouvernement turc et auprès des autres Gouvernements visés au présent Article dans les mêmes conditions, tout en tenant compte de l'abolition des Capitulations.

ARTICLE 72.

Dans les territoires demeurant turcs en vertu du présent Traité, les biens, droits et intérêts appartenant à l'Allemagne, à l'Autriche, à la Hongrie et à la Bulgarie ou à leurs ressortissants qui auraient fait l'objet, avant la mise en vigueur du présent Traité, de saisie ou d'occupation de la part des Gouvernements alliés, demeureront en la possession de ces derniers jusqu'à la conclusion d'arrangements à intervenir entre ces Gouvernements et les Gouvernements allemand, autrichien, hongrois et bulgare ou leurs ressortissants intéressés. Si ces biens, droits et intérêts ont fait l'objet de liquidations, ces liquidations sont confirmées.

Dans les territoires détachés de la Turquie en vertu du présent Traité, les Gouvernements y exerçant l'autorité pourront, dans le délai d'un an à dater de la mise en vigueur du présent Traité, liquider les biens, droits et intérêts appartenant à l'Allemagne, à l'Autriche, à la Hongrie et à la Bulgarie ou à leurs ressortissants.

Le produit des liquidations, qu'elles aient été déjà ou non effectuées, sera versé à la Commission des Réparations établie par le Traité de Paix conclu avec l'Etat intéressé si les biens liquidés sont la propriété de l'Etat allemand, autrichien, hongrois ou bulgare. Il sera versé directement aux propriétaires si les biens liquidés sont une propriété privée.

Les dispositions du présent Article ne s'appliquent pas aux sociétés anonymes ottomanes.

Le Gouvernement turc ne sera en aucune manière responsable des mesures visées par le présent Article.

SECTION II.

CONTRATS ET PRESCRIPTIONS.

ARTICLE 73.

Restent en vigueur, sous réserve des dispositions qui y sont contenues ainsi que des stipulations du présent Traité, les contrats appartenant aux catégories indiquées ci-après, conclus entre parties devenues par la suite ennemies telles qu'elles sont définies à l'Article 82, et antérieurement à la date indiquée audit Article :

a) Les contrats ayant pour objet une vente immobilière encore que la vente elle-même n'ait pas encore été régulièrement réalisée si, en fait, la livraison a été effectuée avant la date à laquelle les parties sont devenues ennemies aux termes de l'Article 82;

b) Les baux, contrats de location et promesses de location passés entre particuliers;

c) Les contrats passés entre particuliers relatifs à l'exploitation de mines, de forêts ou de domaines agricoles;

d) Les contrats d'hypothèque, de gage et de nantissement;

e) Les contrats constitutifs de sociétés, sans que cette disposition s'applique aux sociétés en nom collectif ne constituant pas, d'après la loi qui les régit, une personnalité distincte de celle des parties (*partnerships*);

f) Les contrats, quel qu'en soit l'objet, passés entre les particuliers ou sociétés et l'Etat, les provinces, municipalités ou autres personnes juridiques administratives analogues;

g) Les contrats relatifs au statut familial;

h) Les contrats relatifs à des donations ou à des libéralités de quelque nature que ce soit.

Le présent Article ne pourra être invoqué pour donner à des contrats une autre valeur que celle qu'ils avaient par eux-mêmes lorsqu'ils ont été conclus.

Il ne s'appliquera pas aux contrats de concession.

ARTICLE 74.

Les contrats d'assurance sont régis par les dispositions prévues par l'Annexe à la présente Section.

ARTICLE 75.

Les contrats, autres que ceux énumérés aux Articles 73 et 74 et autres que les contrats de concession, passés entre personnes devenues ultérieurement ennemies, seront considérés comme ayant été annulés à partir de la date à laquelle les parties sont devenues ennemies.

Toutefois, chacune des parties au contrat pourra en réclamer l'exécution jusqu'à l'expiration d'un délai de trois mois à partir de la mise en vigueur du présent Traité, à la condition de verser à l'autre partie, s'il y a lieu, une indemnité correspondant à la différence entre les conditions du moment où le contrat a été conclu et celles du moment où son maintien est réclamé. Cette indemnité, à défaut d'accord entre les parties, sera fixée par le Tribunal Arbitral Mixte.

ARTICLE 76.

Est confirmée la validité de toutes transactions intervenues avant la mise en vigueur du présent Traité entre les ressortissants des Puissances contractantes, parties aux contrats indiqués aux Articles 73 à 75, et ayant pour objet notamment la résiliation, le maintien, les modalités d'exécution ou la modification de ces contrats, y compris les accords portant sur la monnaie de payement ou sur le taux de change.

ARTICLE 77.

Restent en vigueur et soumis au droit commun les contrats entre ressortissants alliés et turcs conclus postérieurement au 30 octobre 1918.

Restent également en vigueur et soumis au droit commun les contrats dûment intervenus avec le Gouvernement de Constantinople postérieurement au 30 octobre 1918 jusqu'au 16 mars 1920.

Tous contrats et arrangements dûment conclus postérieurement au 16 mars 1920 avec le Gouvernement de Constantinople et intéressant les territoires demeurés sous l'autorité effective dudit Gouvernement seront soumis à l'approbation de la Grande Assemblée Nationale de Turquie sur la demande des intéressés présentée dans un délai de trois mois, à compter de la mise en vigueur du présent Traité. Les payements effectués en vertu de ces contrats seront dûment portés au crédit de la partie qui les aurait effectués.

Au cas où l'approbation ne serait pas accordée, la partie intéressée aura droit, s'il y a lieu, à une indemnité correspondant au dommage direct effectivement subi et qui, à défaut d'accord amiable, sera fixée par le Tribunal Arbitral Mixte.

Les dispositions du présent Article ne sont applicables ni aux contrats de concession ni aux transferts de concessions.

ARTICLE 78.

Tous les différends déjà existants, ou pouvant s'élever avant l'expiration du délai de six mois prévu ci-après, au sujet des contrats autres que les contrats de concession intervenus entre parties devenues par la suite ennemies, seront réglés par le Tribunal Arbitral Mixte, à l'exception des différends qui, par application des lois des Puissances neutres, seraient de la compétence des tribunaux nationaux de ces Puissances. En ce dernier cas, ces différends seront réglés par ces tribunaux nationaux à l'exclusion du Tribunal Arbitral Mixte. Les plaintes relatives aux différends, qui, en vertu du présent Article, sont de la compétence du Tribunal Arbitral Mixte, devront être présentées audit Tribunal dans un délai de six mois à compter de la date de constitution de ce Tribunal.

Ce délai expiré, les différends qui n'auraient pas été soumis au Tribunal Arbitral Mixte seront réglés par les juridictions compétentes d'après le droit commun.

Les dispositions du présent Article ne sont pas applicables lorsque toutes les parties au contrat résidaient dans le même pays pendant la guerre et y disposaient librement de leurs personnes et de leurs biens, ni lorsqu'il s'agit d'un différend au sujet duquel un jugement a été rendu par un tribunal compétent antérieurement à la date à laquelle les parties sont devenues ennemies.

ARTICLE 79.

Sur le territoire des Hautes Parties contractantes, dans les rapports entre ennemis, tous délais quelconques de prescription, de péremption ou forclusion de procédure, qu'ils aient commencé à courir avant le début de la guerre ou après, seront considérés comme ayant été suspendus depuis le 29 octobre 1914 jusqu'à l'expiration de trois mois après la mise en vigueur du présent Traité.

Cette disposition s'applique notamment aux délais de présentation de coupons d'intérêts et de dividendes, et de présentation, en vue du remboursement, des valeurs sorties au tirage ou remboursables à tout autre titre.

En ce qui concerne la Roumanie, les délais ci-dessus seront considérés comme ayant été suspendus à partir du 27 août 1916.

ARTICLE 80.

Dans les rapports entre ennemis, aucun effet de commerce émis avant la guerre ne sera considéré comme invalidé par le seul fait de n'avoir pas été présenté pour acceptation ou pour payement dans les délais voulus, ni pour défaut d'avis aux tireurs ou aux endosseurs de non-acceptation ou de non-payement, ni en raison du défaut de protêt ni pour défaut d'accomplissement d'une formalité quelconque pendant la guerre.

Si la période pendant laquelle un effet de commerce aurait dû être présenté à l'acceptation ou au payement, ou pendant laquelle l'avis de non-acceptation ou de non-payement aurait dû être donné aux tireurs ou endosseurs, ou pendant laquelle il aurait dû être protesté, est échue pendant la guerre, et si la partie qui aurait dû présenter ou protester l'effet ou donner avis de la non-acceptation ou du non-payement ne l'a pas fait pendant la guerre, il lui sera accordé trois mois après la mise en vigueur du présent Traité pour présenter l'effet, donner avis de non-acceptation ou de non-payement ou dresser protêt.

Article 81.

Les ventes effectuées pendant la guerre en réalisation de nantissements ou d'hypothèques constitués avant la guerre et garantissant des dettes devenues exigibles, seront réputées acquises, encore que toutes les formalités requises pour avertir le débiteur n'ayant pu être observées et sous réserve expresse du droit dudit débiteur d'assigner le créancier devant le Tribunal Arbitral Mixte en reddition de comptes à peine de tous dommages et intérêts.

Le Tribunal aura pour mission d'apurer les comptes entre les parties, de vérifier les conditions dans lesquelles le bien donné en nantissement ou en hypothèque a été vendu et de mettre à la charge du créancier la réparation du préjudice qu'aurait subi le débiteur par suite de la vente, si le créancier a agi de mauvaise foi, ou s'il n'a pas fait toutes diligences en son pouvoir pour éviter de recourir à la vente, ou pour que celle-ci soit effectuée dans des conditions assurant la réalisation d'un juste prix.

La présente disposition ne sera applicable qu'entre ennemis et ne s'étendra pas aux opérations ci-dessus visées qui auraient été effectuées postérieurement au 1er mai 1923.

Article 82.

Au sens de la présente Section, les personnes parties à un contrat seront considérées comme ennemies à partir de la date à laquelle le commerce entre elles sera devenu impossible en fait ou aura été interdit ou sera devenu illégal en vertu des lois, décrets ou règlements auxquels une de ces parties était soumise.

Par dérogation aux Articles 73 à 75, 79 et 80, seront soumis au droit commun les contrats conclus sur le territoire de l'une des Hautes Parties contractantes entre personnes ennemies (y compris les sociétés) ou leurs agents, si ce territoire était pays ennemi pour l'un des contractants qui y est resté pendant la guerre en y pouvant librement disposer de sa personne et de ses biens.

Article 83.

Les dispositions de la présente Section ne s'appliqueront pas entre le Japon et la Turquie et les matières qui en font l'objet seront, dans chacun de ces deux pays, réglées d'après la législation locale.

ANNEXE.

I. ASSURANCES SUR LA VIE.

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§ I.

Les contrats d'assurances sur la vie, passés entre un assureur et une personne devenue par la suite ennemie, ne seront pas considérés comme annulés par l'ouverture des hostilités ou par le fait que la personne est devenue ennemie.

Toute somme assurée devenue effectivement exigible pendant la guerre, aux termes d'un contrat qui, en vertu de l'alinéa précédent, n'est pas considéré comme annulé, sera recouvrable après la guerre. Cette somme sera augmentée des intérêts à 5 p. % l'an depuis la date de son exigibilité jusqu'au jour du payement.

Si le contrat est devenu caduc pendant la guerre par suite du non-payement des primes, ou s'il est devenu sans effet par suite du non-accomplissement des clauses du contrat, l'assuré ou ses représentants ou ayants droit auront le droit, à tout moment, pendant douze mois à dater du jour de la mise en vigueur du présent Traité, de réclamer à l'assureur la valeur de rachat de la police au jour de sa caducité ou de son annulation, augmentée des intérêts à 5 p. % l'an.

Les ressortissants turcs dont les contrats d'assurances sur la vie, souscrits antérieurement au 29 octobre 1914, ont été annulés ou réduits, antérieurement au présent Traité, pour non-payement des primes, conformément aux dispositions desdits contrats, auront la faculté pendant un délai de trois mois, à compter de la mise en vigueur du présent Traité, et s'ils sont alors vivants, de rétablir leurs polices pour le plein du capital assuré. A cet effet, ils devront, après avoir passé devant le médecin de la Compagnie une visite médicale jugée satisfaisante par celle-ci, verser les primes arriérées augmentées des intérêts composés à 5 p. %.

§ 2.

Il est entendu que les contrats d'assurances sur la vie, souscrits en monnaie autre que la livre turque, conclus avant le 29 octobre 1914 entre les sociétés actuellement ressortissantes d'une Puissance alliée et les ressortissants turcs, pour lesquels des primes ont été payées antérieurement et postérieurement au 18 novembre 1915, ou même seulement avant cette date, seront réglés : 1° en arrêtant les droits de l'assuré, conformément aux conditions générales de la police, pour la période antérieure au 18 novembre 1915, dans la monnaie stipulée au contrat, telle qu'elle a cours dans le pays dont cette monnaie émane (par exemple, toute somme stipulée en francs, en francs or, ou en francs effectifs, sera payée en francs français) ; 2° en livres turques papier — la livre étant censée valoir le pair d'avant-guerre — pour la période postérieure au 18 novembre 1915.

Si les ressortissants turcs dont les contrats sont conclus dans une monnaie autre que la monnaie turque, justifient avoir continué depuis le 18 novembre 1915 à acquitter leurs primes en la monnaie stipulée aux contrats, lesdits contrats seront réglés dans cette même monnaie, telle qu'elle a cours dans le pays dont elle émane, même pour la période postérieure au 18 novembre 1915.

Les ressortissants turcs dont les contrats, conclus avant le 29 octobre 1914, dans une monnaie autre que la monnaie turque, avec des sociétés actuellement ressortissantes d'une Puissance alliée, sont, par suite du payement des primes, encore en vigueur, auront la faculté, pendant un délai de trois mois à compter de la mise en vigueur du présent Traité, de rétablir leurs polices pour le plein du capital dans la monnaie stipulée dans leur contrat telle qu'elle a cours dans le pays dont elle émane. A cet effet, ils devront verser en cette monnaie les primes échues depuis le 18 novembre 1915. Par contre, les primes effectivement versées par eux en livres turques papier depuis ladite date leur seront remboursées dans la même monnaie.

§ 3.

En ce qui concerne les assurances contractées en livres turques, le règlement sera fait en livres turques papier.

§ 4.

Les dispositions des paragraphes 2 et 3 ne seront pas applicables aux assurés qui, par une convention expresse, auront déjà régularisé avec la société d'assurance la valorisation de leurs polices et le mode de payement de leurs primes, ni à ceux dont les polices seront définitivement réglées à la date de la mise en vigueur du présent Traité.

§ 5.

Pour l'application des paragraphes précédents seront considérés comme contrats d'assurance sur la vie les contrats d'assurance qui se basent sur les probabilités de la vie humaine combinées avec le taux d'intérêt pour le calcul des engagements réciproques des deux parties.

II ASSURANCES MARITIMES.

§ 6.

Ne sont pas considérés comme annulés, sous réserve des dispositions qui y sont contenues, les contrats d'assurance maritime au cas où le risque avait commencé à courir avant que les parties fussent devenues ennemies et à la condition qu'il ne s'agisse pas de couvrir des sinistres résultant d'actes de guerre accomplis par la Puissance à laquelle ressortit l'assureur ou par les alliés de cette Puissance.

III. ASSURANCES CONTRE L'INCENDIE ET AUTRES ASSURANCES.

§ 7.

Ne sont pas considérés comme annulés, sous la réserve énoncée au paragraphe précédent, les contrats d'assurance contre l'incendie ainsi que tous autres contrats d'assurance.

SECTION III.

DETTES.

ARTICLE 84.

Les Hautes Parties contractantes sont d'accord pour reconnaître que les dettes exigibles avant la guerre, ou devenues exigibles pendant la guerre, en vertu de contrats passés avant la guerre, et restées impayées par suite de la guerre, doivent être réglées et payées dans les conditions prévues aux contrats et dans la monnaie convenue, telle qu'elle a cours dans le pays où elle est émise.

Sans préjudice des dispositions de l'Annexe à la Section II de la présente Partie, il est entendu qu'au cas où des payements à effectuer en vertu d'un contrat d'avant-guerre seraient la représentation de sommes perçues en tout ou en partie au cours de la guerre dans une monnaie autre que celle indiquée audit contrat, ces payements pourront être effectués par le versement, dans la monnaie où elles ont été perçues, des sommes effectivement perçues. Cette disposition ne portera pas atteinte aux stipulations contraires qui, avant la mise en vigueur du présent Traité, seraient intervenues à l'amiable entre les parties intéressées.

ARTICLE 85.

La Dette Publique Ottomane est, d'un commun accord, laissée en dehors de la présente Section et des autres Sections de la présente Partie (Clauses Economiques).

SECTION IV.

PROPRIÉTÉ INDUSTRIELLE, LITTÉRAIRE OU ARTISTIQUE.

ARTICLE 86.

Sous réserve des stipulations du présent Traité, les droits de de propriété industrielle, littéraire ou artistique, tels qu'ils existaient au 1er août 1914 conformément à la législation de chacun des pays contractants, seront rétablis ou restaurés, à partir de la mise en vigueur du présent Traité, dans les territoires des Hautes Parties contractantes, en faveur des personnes qui en étaient bénéficiaires au moment où l'état de guerre a commencé d'exister, ou de leurs ayants droit. De même, les droits qui, si la guerre n'avait pas eu lieu, auraient pu être acquis pendant la durée de la guerre, à la suite d'une demande légale faite pour la protection de la propriété industrielle ou de la publication d'une œuvre littéraire ou artistique, seront reconnus et rétablis en faveur des personnes qui y auraient des titres, à partir de la mise en vigueur du présent Traité.

Sans préjudice des droits qui doivent être restaurés en vertu de la disposition ci-dessus, tous actes (y compris l'octroi de licences) faits en vertu des mesures spéciales qui auraient été prises pendant la guerre par une autorité législative, exécutive ou administrative d'une Puissance alliée à l'égard des droits des ressortissants ottomans en matière de propriété industrielle, littéraire ou artistique, demeureront valables et continueront à avoir leurs pleins effets. Cette stipulation s'appliquera *mutatis mutandis* aux mesures correspondantes des autorités turques prises à l'égard des droits des ressortissants d'une Puissance alliée quelconque.

Article 87.

Un délai minimum d'une année, à partir de la mise en vigueur du présent Traité, sans surtaxe ni pénalité d'aucune sorte, sera accordé aux ressortissants turcs sur le territoire de chacune des autres Puissances contractantes et aux ressortissants de ces Puissances en Turquie pour accomplir tout acte, remplir toute formalité, payer toute taxe et généralement satisfaire à toute obligation prescrite par les lois et les règlements de chaque Etat pour conserver ou obtenir les droits de propriété industrielle déjà acquis au 1er août 1914 ou qui, si la guerre n'avait pas eu lieu, auraient pu être acquis depuis cette date, à la suite d'une demande faite, avant la guerre ou pendant sa durée, ainsi que pour y former opposition.

Les droits de propriété industrielle qui auraient été frappés de déchéance par suite d'un défaut d'accomplissement d'un acte, d'exécution d'une formalité ou de payement d'une taxe, seront remis en vigueur, sous la réserve toutefois, en ce qui concerne les brevets et dessins, que chaque Puissance pourra prendre les mesures qu'elle jugerait équitablement nécessaires pour la sauvegarde des droits des tiers qui auraient exploité ou employé des brevets ou des dessins pendant le temps où ils étaient frappés de déchéance.

La période comprise entre le 1er août 1914 et la date de la mise en vigueur du présent Traité, n'entrera pas en ligne de compte dans le délai prévu pour la mise en exploitation d'un brevet ou pour l'usage de marques de fabrique ou de commerce ou de dessins, et il est convenu en outre qu'aucun brevet, marque de fabrique ou de commerce ou dessin, qui était encore en vigueur au 1er août 1914 ne pourra être frappé de déchéance ou d'annulation, du seul chef de non-exploitation ou de non-usage avant l'expiration d'un délai de deux ans à partir de la mise en vigueur du présent Traité.

ARTICLE 88.

Aucune action ne pourra être intentée ni aucune revendication exercée, d'une part, par des ressortissants turcs ou par des personnes résidant ou exerçant leur industrie en Turquie et, d'autre part, par des ressortissants des Puissances alliées ou des personnes résidant ou exerçant leur industrie sur le territoire de ces Puissances, ni par les tiers auxquels ces personnes auraient cédé leur droits pendant la guerre, à raison de faits qui se seraient produits sur le territoire de l'autre partie entre la date de l'état de guerre et celle de la mise en vigueur du présent Traité et qui auraient pu être considérés comme portant atteinte à des droits de propriété industrielle ou de propriété littéraire ou artistique ayant existé à un moment quelconque pendant la guerre ou qui seront rétablis conformément à l'Article 86.

Parmi les faits ci-dessus visés, sont compris l'utilisation par les Gouvernements des Hautes Parties contractantes ou par toute personne pour le compte de ces Gouvernements ou avec leur assentiment de droits de propriété industrielle, littéraire ou artistique, aussi bien que la vente, la mise en vente ou l'emploi de produits, appareils, articles ou objets quelconques auxquels s'appliqueraient ces droits.

ARTICLE 89.

Les contrats de licence d'exploitation de droits de propriété industrielle ou de reproduction d'œuvres littéraires ou artistiques, conclus avant l'état de guerre entre les ressortissants des Puissances alliées ou des personnes résidant sur leurs territoires ou y exerçant leur industrie d'une part, et des ressortissants ottomans, d'autre part, seront considérés comme résiliés à dater de l'état de guerre entre la Turquie et la Puissance alliée. Mais, dans tous les cas, le bénéficiaire primitif d'un contrat de ce genre aura le droit, dans un délai de six mois à dater de la mise en vigueur du présent Traité, d'exiger du titulaire des droits la concession d'une nouvelle licence dont les conditions, à défaut d'entente entre les parties, seront fixées par le Tribunal Arbitral Mixte prévu à la Section V de la présente Partie. Le Tribunal pourra, s'il y a lieu, fixer alors le montant des redevances qui lui paraîtrait justifié en raison de l'utilisation des droits pendant la guerre.

ARTICLE 90.

Les habitants des territoires détachés de la Turquie en vertu du présent Traité conserveront, nonobstant cette séparation et le changement de nationalité qui en résultera, la pleine et entière jouissance en Turquie de tous les droits de propriété industrielle et de propriété littéraire et artistique, dont ils étaient titulaires, suivant la législation ottomane, au moment de ce transfert.

Les droits de propriété industrielle, littéraire et artistique en vigueur sur les territoires détachés de la Turquie en vertu du présent Traité au moment de cette séparation ou qui seront rétablis ou restaurés par l'application de l'Article 86, seront reconnus par l'Etat auquel sera transféré ledit territoire et demeureront en vigueur sur ce territoire pour la durée qui leur sera accordée suivant la législation ottomane.

ARTICLE 91.

Tout octroi de brevets d'invention ou enregistrement de marques de fabrique aussi bien que tout enregistrement de transfert ou cession de brevets ou de marques de fabrique, qui ont été dûment effectués depuis le 30 octobre 1918 par le Gouvernement impérial ottoman à Constantinople ou ailleurs, seront soumis au Gouvernement turc et enregistrés sur la demande des intéressés présentée dans un délai de trois mois à compter de la mise en vigueur du présent Traité. Cet enregistrement aura effet à compter de la date de l'enregistrement primitif.

SECTION V.

TRIBUNAL ARBITRAL MIXTE.

ARTICLE 92.

Un Tribunal Arbitral Mixte sera constitué entre chacune des Puissances Alliées, d'une part, et la Turquie, d'autre part, dans le délai de trois mois à dater de la mise en vigueur du présent Traité.

Chacun de ces tribunaux sera composé de trois membres, dont deux respectivement nommés par chacun des Gouvernements intéressés, qui auront la faculté de désigner plusieurs personnes parmi lesquelles ils choisiront celle appelée à siéger, selon les cas, comme membre du Tribunal. Le Président sera nommé après accord entre les deux Gouvernements intéressés.

Au cas où cet accord ne serait pas réalisé dans le délai de deux mois à compter de la mise en vigueur du présent Traité, ledit Président sera désigné, à la demande d'un des Gouvernements intéressés, parmi les personnes ressortissant à des Puissances demeurées neutres pendant la guerre, par le Président de la Cour permanente de Justice Internationale de la Haye.

Si, dans ledit délai de deux mois, un des Gouvernements intéressés ne nomme pas le membre devant le représenter au Tribunal, il appartiendra au Conseil de la Société des Nations de procéder à la nomination de ce membre, à la demande de l'autre Gouvernement intéressé.

En cas de décès ou de démission d'un membre du Tribunal ou si un membre du Tribunal se trouve, pour une raison quelconque, dans l'impossibilité de remplir ses fonctions, il sera pourvu à son remplacement selon le mode fixé pour sa nomination, le délai de deux mois qui est prévu commençant à courir du jour du décès, de la démission ou de l'impossibilité dûment constatée.

ARTICLE 93.

Les Tribunaux Arbitraux Mixtes auront leur siège à Constantinople. Si le nombre et la nature des affaires le justifient, les Gouvernements intéressés auront la faculté de créer dans chaque Tribunal une ou plusieurs sections supplémentaires, dont le siège pourra être fixé dans tel lieu qu'il appartiendra. Chacune de ces sections sera composée d'un Vice-Président et de deux membres nommés comme il est dit à l'Article 92, alinéas 2 à 5.

Chaque Gouvernement désignera un ou plusieurs agents pour le représenter devant le Tribunal.

Si, après trois ans à compter de la constitution d'un Tribunal Arbitral Mixte ou d'une de ses Sections, ce Tribunal ou cette Section n'a pas achevé ses travaux et si la Puissance sur le territoire de laquelle ledit Tribunal ou ladite Section a son siège, le demande, ce siège sera transféré hors de ce territoire.

ARTICLE 94.

Les Tribunaux Arbitraux Mixtes, créés en vertu des Articles 92 et 93, jugeront les différends qui sont de leur compétence en vertu du présent Traité.

La décision de la majorité des membres sera celle du Tribunal.

Les Hautes Parties contractantes conviennent de considérer les décisions des Tribunaux Arbitraux Mixtes comme définitives, et de les rendre obligatoires pour leurs ressortissants et d'en assurer l'exécution sur leurs territoires dès que la notification des sentences leur sera parvenue, sans qu'il soit besoin d'aucune procédure d'*exequatur*.

Les Hautes Parties contractantes s'engagent en outre à ce que leurs tribunaux et autorités prêtent directement aux Tribunaux Arbitraux Mixtes toute l'aide qui sera en leur pouvoir, spécialement en ce qui concerne la transmission des notifications et la réunion des preuves.

ARTICLE 95.

Les Tribunaux Arbitraux Mixtes seront guidés par la justice, l'équité et la bonne foi.

Chaque Tribunal fixera la langue à employer devant lui en prescrivant les traductions nécessaires pour assurer la parfaite intelligence des affaires; il établira les règles et les délais de la procédure à suivre devant lui. Ces règles devront observer les principes suivants :

1. La procédure comportera respectivement la production d'un mémoire et d'un contre-mémoire, avec faculté de présenter une réplique et une contre-réplique. Si l'une des parties demande à présenter ou à faire présenter des observations orales, elle y sera autorisée sous réserve de la faculté accordée, en pareil cas, à l'autre partie d'y procéder également.

2. Le Tribunal aura tout pouvoir d'ordonner des enquêtes, des productions de pièces, des expertises, de procéder à des descentes sur lieux, de requérir tous renseignements, d'entendre tous témoins et de demander aux parties ou à leurs représentants toutes explications verbales ou écrites.

3. Sauf stipulation contraire dans le présent Traité, aucune réclamation ne sera admise après l'expiration du délai de six mois à compter de la constitution du Tribunal, si ce n'est sur autorisation spéciale donnée par une décision dudit Tribunal et exceptionnellement justifiée par des raisons de distance ou de force majeure.

4. Il sera du devoir du Tribunal de tenir chaque semaine, sauf pendant les périodes de vacances qui n'excéderont pas huit semaines en totalité pendant l'année, le nombre d'audiences nécessaire pour assurer la prompte expédition des affaires.

5. Les jugements devront toujours être rendus au plus tard deux mois après la clôture des débats, qui comportera la mise de l'affaire au délibéré du Tribunal.

6. Les débats oraux, lorsque l'affaire en comportera, et, dans tous les cas, le prononcé des jugements auront lieu en audience publique.

7. Chaque Tribunal Arbitral Mixte aura la faculté, s'il le juge utile à la bonne expédition des affaires, de tenir une ou plusieurs audiences hors de son siège.

ARTICLE 96.

Les Gouvernements intéressés désigneront d'un commun accord un Secrétaire général pour chaque Tribunal, et lui adjoindront chacun un ou plusieurs Secrétaires. Le Secrétaire général et les Secrétaires seront sous les ordres du Tribunal qui, avec l'agrément des Gouvernements intéressés, pourra engager toutes personnes dont le concours lui serait nécessaire.

Le Secrétariat de chaque Tribunal aura ses bureaux à Constantinople; il appartiendra aux Gouvernements intéressés de créer des bureaux annexes en tel autre lieu qu'il appartiendra.

Chaque Tribunal conservera, dans son Secrétariat, les archives, pièces et documents des affaires qui lui auront été soumises et, à l'expiration de son mandat, en effectuera le dépôt dans les archives du Gouvernement où il aura eu son siège. Ces archives seront toujours ouvertes aux Gouvernements intéressés.

ARTICLE 97.

Chaque Gouvernement payera les honoraires du membre du Tribunal Arbitral Mixte qu'il nomme, ainsi que ceux de tout agent et secrétaire qu'il désignera.

Les honoraires du Président et ceux du Secrétaire général seront fixés d'accord entre les Gouvernements intéressés, et ces honoraires, ainsi que les dépenses communes du Tribunal, seront payés par moitié par les deux Gouvernements.

ARTICLE 98.

La présente Section ne sera pas applicable aux affaires qui, entre le Japon et la Turquie, seraient, d'après le présent Traité, de la compétence du Tribunal Arbitral Mixte; ces affaires seront réglées suivant accord entre les deux Gouvernements.

SECTION VI.

TRAITÉS.

ARTICLE 99.

Dès la mise en vigueur du présent Traité et sans préjudice des dispositions qui y sont contenues par ailleurs, les Traités, Conventions et Accords plurilatéraux de caractère économique ou technique, énumérés ci-après, entreront de nouveau en vigueur entre la Turquie et celles des autres Puissances contractantes qui y sont parties :

1° Conventions du 14 mars 1884, du 1er décembre 1886 et du 23 mars 1887, et Protocole de clôture du 7 juillet 1887, relatifs à la protection des câbles sous-marins ;

2° Convention du 5 juillet 1890, relative à la publication des tarifs de douane et à l'organisation d'une Union internationale pour la publication des tarifs douaniers ;

3° Arrangement du 9 décembre 1907, relatif à la création de l'Office international d'hygiène publique à Paris ;

4° Convention du 7 juin 1905, relative à la création d'un Institut international agricole à Rome ;

5° Convention du 16 juillet 1863, relative au rachat des droits de péage sur l'Escaut ;

6° Convention du 29 octobre 1888, relative à l'établissement d'un régime destiné à garantir le libre usage du Canal de Suez, — sous réserve des stipulations spéciales prévues par l'Article 19 du présent Traité ;

7° Conventions et Arrangements de l'Union postale universelle, y compris les Conventions et Arrangements signés à Madrid le 30 novembre 1920 ;

8° Conventions télégraphiques internationales, signées à Saint-Pétersbourg le 10/22 juillet 1875 ; Règlements et tarifs arrêtés par la Conférence télégraphique internationale de Lisbonne, le 11 juin 1908.

ARTICLE 100.

La Turquie s'engage à adhérer aux Conventions ou Accords énumérés ci-après ou à les ratifier :

1° Convention du 11 octobre 1909, relative à la circulation internationale des automobiles ;

2° Accord du 15 mai 1886, relatif au plombage des wagons assujettis à la douane et Protocole du 18 mai 1907 ;

3° Convention du 23 septembre 1910, relative à l'unification de certaines règles en matière d'abordage, d'assistance et de sauvetage maritimes ;

4° Convention du 21 décembre 1904, relative à l'exemption pour les bâtiments hospitaliers des droits et taxes dans les ports ;

5° Conventions du 18 mai 1904, du 4 mai 1910 et du 30 septembre 1921, relatives à la répression de la traite des femmes;

6° Convention du 4 mai 1910, relative à la suppression des publications pornographiques;

7° Convention sanitaire du 17 janvier 1912, sous réserve des articles 54, 68 et 90;

8° Conventions du 3 novembre 1881 et du 15 avril 1889, relatives aux mesures à prendre contre le phylloxéra;

9° Convention sur l'opium signée à La Haye le 23 janvier 1912 et Protocole additionnel de 1914;

10° Convention radiotélégraphique internationale du 5 juillet 1912;

11° Convention sur le régime des spiritueux en Afrique, signée à Saint-Germain-en-Laye le 10 septembre 1919;

12° Convention portant revision de l'Acte général de Berlin du 26 février 1885 et de l'Acte général et de la Déclaration de Bruxelles du 2 juillet 1890, signée à Saint-Germain-en-Laye le 10 septembre 1919;

13° Convention du 13 octobre 1919 portant réglementation de la navigation aérienne, — si la Turquie se voit accorder, par application du Protocole du 1er mai 1920, telles dérogations que sa situation géographique rendrait nécessaires;

14° Convention du 26 septembre 1906, signée à Berne, pour interdire l'usage du phosphore blanc dans la fabrication des allumettes.

La Turquie s'engage en outre à participer à l'élaboration de nouvelles conventions internationales relatives à la télégraphie et à la radiotélégraphie.

PARTIE IV.

VOIES DE COMMUNICATIONS.

ET QUESTIONS SANITAIRES.

SECTION I.

VOIES DE COMMUNICATIONS.

ARTICLE 101.

La Turquie déclare adhérer à la Convention et au Statut sur la liberté du transit adoptés par la Conférence de Barcelone le 14 avril 1921, ainsi qu'à la Convention et au Statut sur le régime des voies navigables d'intérêt international adoptés par ladite Conférence le 19 avril 1921 et au Protocole additionnel.

En conséquence, la Turquie s'engage à mettre en application les dispositions de ces Conventions, Statuts et Protocole dès la mise en vigueur du présent Traité.

ARTICLE 102.

La Turquie déclare adhérer à la Déclaration de Barcelone en date du 20 avril 1921 « portant reconnaissance du droit au pavillon des Etats dépourvus d'un littoral maritime ».

ARTICLE 103.

La Turquie déclare adhérer aux Recommandations de la Conférence de Barcelone en date du 20 avril 1921 concernant les ports soumis au régime international. La Turquie fera connaître ultérieurement les ports qui seront placés sous ce régime.

ARTICLE 104.

La Turquie déclare adhérer aux Recommandations de la Conférence de Barcelone en date du 20 avril 1921 concernant les voies ferrées internationales. Ces Recommandations seront mises en application par le Gouvernement turc dès la mise en vigueur du présent Traité et sous réserve de réciprocité.

ARTICLE 105.

La Turquie s'engage à adhérer, dès la mise en vigueur du présent Traité, aux Conventions et Arrangements signés à Berne le 14 octobre 1890, le 20 septembre 1893, le 16 juillet 1895, le 16 juin 1898 et le 19 septembre 1906 sur le transport des marchandises par voies ferrées.

ARTICLE 106.

Lorsque, par suite du tracé des nouvelles frontières, une ligne reliant deux parties d'un même pays traversera un autre pays, ou lorsqu'une ligne d'embranchement partant d'un pays se terminera dans un autre, les conditions d'exploitation, en ce qui concerne le trafic entre les deux pays, seront, sous réserve de stipulations spéciales, réglées par un arrangement à conclure entre les administrations de chemins de fer intéressées. Au cas où ces administrations ne parviendraient pas à se mettre d'accord sur les conditions de cet arrangement, ces conditions seraient fixées par voie d'arbitrage.

L'établissement de toutes les nouvelles gares frontières entre la Turquie et les Etats limitrophes, ainsi que l'exploitation des lignes entre ces gares, seront réglées par des arrangements conclus dans les mêmes conditions.

ARTICLE 107.

Les voyageurs et les marchandises en provenance ou à destination de la Turquie ou de la Grèce, utilisant en transit les trois tronçons des Chemins de fer orientaux compris entre la frontière gréco-bulgare et la frontière gréco-turque près de Kouleli-Burgas ne seront du fait de ce transit assujettis à aucun droit ou taxe, ni à aucune formalité de vérification de passeports ou de douane.

L'exécution des dispositions du présent Article sera assurée par un Commissaire qui sera choisi par le Conseil de la Société des Nations.

Les Gouvernements grec et turc auront le droit de nommer chacun auprès de ce Commissaire un représentant, qui aura pour fonctions de signaler à l'attention du Commissaire toute question relative à l'exécution des susdites dispositions, et qui jouira de toutes les facilités nécessaires pour l'accomplissement de sa tâche. Ces représentants se mettront d'accord avec le Commissaire sur le nombre et le caractère du personnel subalterne dont ils auront besoin.

Il appartiendra audit Commissaire de soumettre à la décision du Conseil de la Société des Nations toute question relative à l'exécution desdites dispositions et qu'il n'aura pas réussi à résoudre. Les Gouvernements grec et turc s'engagent à observer toute décision rendue par ledit Conseil, votant à la majorité.

Le traitement ainsi que les frais relatifs au fonctionnement du service dudit Commissaire seront supportés par parts égales par les Gouvernements grec et turc.

Dans le cas où la Turquie construirait ultérieurement une ligne de chemin de fer reliant Andrinople à la ligne entre Kouleli-Burgas et Constantinople, les dispositions du présent Article deviendraient caduques en ce qui concerne le transit entre les points de la frontière gréco-turque sis près de Kouleli-Burgas et Bosna-Keuy respectivement.

Chacune des deux Puissances intéressées aura le droit, après un délai de cinq ans à partir de la mise en vigueur du présent Traité, de s'adresser au Conseil de la Société des Nations en vue de faire décider s'il y a lieu de maintenir le contrôle visé aux alinéas 2 à 5 du présent Article. Toutefois, il demeure entendu que les dispositions du premier alinéa resteront en vigueur pour le transit sur les deux tronçons des Chemins de fer orientaux entre la frontière gréco-bulgare et Bosna-Keuy.

Article 108.

Sous réserve de stipulations particulières relatives au transfert des ports et voies ferrées appartenant soit au Gouvernement turc, soit à des sociétés privées, et situés dans les territoires détachés de la Turquie en vertu du présent Traité, et sous réserve également des dispositions intervenues ou à intervenir entre les Puissances contractantes relatives aux concessionnaires et au service des pensions de retraite du personnel, le transfert des voies ferrées aura lieu dans les conditions suivantes :

1° Les ouvrages et les installations de toutes les voies ferrées seront laissés au complet et en aussi bon état que possibles;

2° Lorsqu'un réseau ayant un matériel roulant à lui propre sera situé en entier sur un territoire transféré, ce matériel sera laissé au complet, d'après le dernier inventaire au 30 octobre 1918;

3° Pour les lignes dont, en vertu du présent Traité, l'administration se trouvera répartie, la répartition du matériel roulant sera fixée par voie d'arrangement amiable entre les administrations auxquelles diverses sections sont attribuées. Cet arrangement devra prendre en considération l'importance du matériel immatriculé sur ces lignes d'après le dernier inventaire au 30 octobre 1918, la longueur des voies, y compris les voies de service, la nature et l'importance du trafic. En cas de désaccord, les différends seront réglés par voie d'arbitrage. La décision arbitrale désignera également, le cas échéant, les locomotives, voitures et wagons qui devront être laissés sur chaque section, fixera les conditions de leur réception et réglera les arrangements jugés nécessaires pour assurer, pendant une période limitée, l'entretien dans les ateliers existants du matériel transféré;

4° Les approvisionnements, le mobilier et l'outillage seront laissés dans les mêmes conditions que le matériel roulant.

ARTICLE 109.

A moins de dispositions contraires, lorsque, par suite du tracé d'une nouvelle frontière, le régime des eaux (canalisations, inondations, irrigations, drainage ou questions analogues) dans un Etat dépend de travaux exécutés sur le territoire d'un autre Etat, ou lorsqu'il est fait usage sur le territoire d'un Etat, en vertu d'usages antérieurs à la guerre, des eaux ou de l'énergie hydraulique nées sur le territoire d'un autre Etat, il doit être établi une entente entre les Etats intéressés de nature à sauvegarder les intérêts et les droits acquis par chacun d'eux.

A défaut d'accord, il sera statué par voie d'arbitrage.

ARTICLE 110.

La Roumanie et la Turquie s'entendront pour fixer équitablement les conditions d'exploitation du câble Constanza-Constantinople. A défaut d'entente, la question sera réglée par voie d'arbitrage.

ARTICLE 111.

La Turquie renonce, en son propre nom et au nom de ses ressortissants, à tous droits, titres ou privilèges de quelque nature que ce soit, sur tout ou partie des câbles n'atterrissant plus sur son territoire.

Si les câbles ou portions de câbles, transférés conformément à l'alinéa précédent, constituent des propriétés privées, il appartiendra aux Gouvernements auxquels la propriété est transférée d'indemniser les propriétaires. En cas de désaccord sur le montant de l'indemnité, celle-ci sera fixée par voie d'arbitrage.

ARTICLE 112.

La Turquie conservera les droits de propriété qu'elle posséderait déjà sur les câbles dont un atterrissage au moins reste en territoire turc.

L'exercice des droits d'atterrissage desdits câbles en territoire non turc et les conditions de leur exploitation, seront réglés à l'amiable par les Etats intéressés. En cas de désaccord, le différend sera réglé par voie d'arbitrage.

ARTICLE 113.

Les Hautes Parties contractantes déclarent accepter, chacune en ce qui la concerne, la suppression des bureaux de poste étrangers en Turquie.

SECTION II.

QUESTIONS SANITAIRES.

ARTICLE 114.

Le Conseil Supérieur de Santé de Constantinople est supprimé. L'Administration turque est chargée de l'organisation sanitaire des côtes et frontières de la Turquie.

ARTICLE 115.

Un seul et même tarif sanitaire, dont le taux et les conditions seront équitables, sera appliqué à tous les navires, sans distinguer entre le pavillon turc et les pavillons étrangers, et aux ressortissants des Puissances étrangères dans les mêmes conditions qu'aux ressortissants de la Turquie.

ARTICLE 116.

La Turquie s'engage à respecter entièrement le droit des employés sanitaires licenciés à une indemnité à prélever sur les fonds de l'ex-Conseil Supérieur de Santé de Constantinople et tous les autres droits acquis des employés et ex-employés de ce Conseil et leurs ayants droit. Toutes les questions ayant trait à ces droits, à la destination à donner au fonds de réserve de l'ex-Conseil Supérieur de Santé de Constantinople, à la liquidation définitive de l'ancienne administration sanitaire ainsi que toute autre question semblable ou connexe, seront réglées par une Commission *ad hoc*, qui sera composée d'un représentant de chacune des Puissances qui faisaient partie du Conseil Supérieur de Santé de Constantinople, à l'exception de l'Allemagne, de l'Autriche et de la Hongrie. En cas de désaccord entre les membres de cette Commission sur une question concernant soit la liquidation visée plus haut, soit l'affectation du reliquat des fonds restant après cette liquidation, toute Puissance représentée au sein de la Commission aura le droit d'en saisir le Conseil de la Société des Nations qui statuera en dernier ressort.

ARTICLE 117.

La Turquie et les Puissances intéressées à la surveillance des pèlerinages de Jérusalem et du Hedjaz et du chemin de fer du Hedjaz, prendront les mesures appropriées, conformément aux dispositions des Conventions sanitaires internationales. A l'effet d'assurer une complète uniformité d'exécution, ces Puissances et la Turquie constitueront une Commission de coordination sanitaire des pèlerinages, dans laquelle les services sanitaires de la Turquie et le Conseil sanitaire maritime et quarantenaire de l'Egypte seront représentés.

Cette Commission devra obtenir le consentement préalable de l'Etat sur le territoire duquel elle se réunira.

ARTICLE 118.

Des rapports sur les travaux de la Commission de coordination des pèlerinages seront adressés au Comité d'hygiène de la Société des Nations et à l'Office international d'hygiène publique, ainsi qu'au Gouvernement de tout pays intéressé aux pèlerinages qui en ferait la demande. La Commission donnera son avis sur toute question qui lui sera posée par la Société des Nations, par l'Office international d'hygiène publique ou par les Gouvernements intéressés.

PARTIE V.

CLAUSES DIVERSES.

1. PRISONNIERS DE GUERRE.

ARTICLE 119.

Les Hautes Parties contractantes s'engagent à rapatrier immédiatement les prisonniers de guerre et internés civils qui seraient restés entre leurs mains.

L'échange des prisonniers de guerre et internés civils détenus respectivement par la Grèce et la Turquie, fait l'objet de l'Accord particulier entre ces Puissances, signé à Lausanne le 30 janvier 1923.

Article 120.

Les prisonniers de guerre et internés civils qui sont passibles ou frappés de peines pour fautes contre la discipline, seront rapatriés sans qu'il soit tenu compte de l'achèvement de leur peine ou de la procédure engagée contre eux.

Ceux qui sont passibles ou frappés de peines pour des faits autres que des infractions disciplinaires, pourront être maintenus en détention.

Article 121.

Les Hautes Parties contractantes s'engagent à donner sur leurs territoires respectifs toutes facilités pour la recherche des disparus ou l'identification des prisonniers de guerre et internés civils qui ont manifesté le désir de ne pas être rapatriés.

Article 122.

Les Hautes Parties contractantes s'engagent à restituer, dès la mise en vigueur du présent Traité, tous les objets, monnaie, valeurs, documents ou effets personnels de toute nature appartenant ou ayant appartenu aux prisonniers de guerre et internés civils, et qui auraient été retenus.

Article 123.

Les Hautes Parties contractantes déclarent renoncer au remboursement réciproque des sommes dues pour l'entretien des prisonniers de guerre capturés par leurs armées.

2. SÉPULTURES.

Article 124.

Sans préjudice des dispositions particulières qui font l'objet de l'Article 126 ci-après, les Hautes Parties contractantes feront respecter et entretenir, sur les territoires soumis à leur autorité, les cimetières, sépultures, ossuaires et monuments commémoratifs des soldats et marins de chacune d'elles tombés sur le champ de bataille ou morts des suites de leurs blessures, d'accidents ou de maladies, depuis le 29 octobre 1914, ainsi que ceux des prisonniers de guerre et des internés civils décédés en captivité depuis la même date.

Les Hautes Parties contractantes s'entendront pour donner toutes facilités de remplir leur mission sur leurs territoires respectifs aux commissions que chacune d'elles pourra charger d'identifier, d'enregistrer, d'entretenir lesdits cimetières, ossuaires et sépultures, et d'élever des monuments convenables sur leurs emplacements. Ces commissions ne devront avoir aucun caractère militaire.

Elles conviennent de se donner réciproquement, sous réserve des prescriptions de leur législation nationale et des nécessités de l'hygiène publique, toutes facilités pour satisfaire aux demandes de rapatriement des restes de leurs soldats et marins visés ci-dessus.

ARTICLE 125.

Les Hautes Parties contractantes s'engagent à se fournir réciproquement :

1° la liste complète des prisonniers de guerre et internés civils décédés en captivité, en y joignant tous renseignements utiles à leur identification ;

2° toutes indications sur le nombre et l'emplacement des sépultures des morts enterrés sans avoir été identifiés.

ARTICLE 126.

L'entretien des sépultures, cimetières, ossuaires et monuments commémoratifs des soldats, marins et prisonniers de guerre turcs morts sur le territoire roumain depuis le 27 août 1916, ainsi que toute autre obligation résultant des Articles 124 et 125 en ce qui concerne les internés civils, feront l'objet d'un arrangement spécial entre le Gouvernement roumain et le Gouvernement turc.

ARTICLE 127.

Pour compléter les stipulations d'ordre général des Articles 124 et 125, les Gouvernements de l'Empire britannique, de la France et de l'Italie, d'une part, et les Gouvernements turc et hellénique, d'autre part, conviennent des dispositions spéciales qui font l'objet des Articles 128 à 136.

ARTICLE 128.

Le Gouvernement turc s'engage, vis-à-vis des Gouvernements de l'Empire britannique, de la France et de l'Italie, à leur concéder séparément et à perpétuité, sur son territoire, les terrains où se trouvent des sépultures, cimetières, ossuaires et monuments commémoratifs de leurs soldats et marins respectifs tombés sur le champs de bataille ou morts des suites de leurs blessures, d'accidents ou de maladies, ainsi que de leurs prisonniers de guerre et internés civils décédés en captivité. Il leur concédera de même les terrains qui seront reconnus nécessaires à l'avenir pour l'établissement de cimetières de groupement, d'ossuaires ou de monuments commémoratifs par les commissions prévues à l'Article 130 .

Il s'engage, en outre, à donner libre accès à ces sépultures, cimetières, ossuaires et monuments, et à autoriser, le cas échéant, la construction des routes et chemins nécessaires.

Le Gouvernement hellénique prend les mêmes engagements en ce qui concerne son territoire.

Les dispositions qui précèdent ne portent pas atteinte à la souveraineté turque ou, suivant le cas, à la souveraienté hellénique, sur les territoires concédés.

ARTICLE 129.

Parmi les terrains à concéder par le Gouvernement turc, seront compris notamment pour l'Empire britannique ceux de la région dite *d'Anzac* (Ari Burnu) qui sont indiqués sur la carte n° 3.

La jouissance par l'Empire britannique du terrain susmentionné sera soumise aux conditions suivantes :

1° Ce terrain ne pourra pas être détourné de son affectation en vertu du présent Traité; en conséquence il ne devra être utilisé dans aucun but militaire ou commercial, ni dans quelque autre but étranger à l'affectation ci-dessus visée;

2° Le Gouvernement turc aura, en tout temps, le droit de faire inspecter ce terrain y compris les cimetières;

3° Le nombre de gardiens civils destinés à la garde des cimetières ne pourra être supérieur à un gardien par cimetière. Il n'y aura pas de gardiens spéciaux pour le terrain compris en dehors des cimetières ;

4° Il ne pourra être construit dans ledit terrain, tant à l'intérieur qu'à l'extérieur des cimetières, que les bâtiments d'habitation strictement nécessaires aux gardiens ;

5° Il ne pourra être construit sur le rivage dudit terrain aucun quai, aucune jetée ou aucun appontement pouvant faciliter le débarquement ou l'embarquement des personnes ou des marchandises ;

6° Toutes formalités nécessaires ne pourront être remplies que sur la côte intérieure des Détroits et l'accès du terrain par la côte de la Mer Egée ne sera permis qu'après l'accomplissement desdites formalités. Le Gouvernement turc accepte que lesdites formalités, qui doivent être aussi simples que possible, ne soient pas, sans préjudice toutefois des autres dispositions du présent Article, plus onéreuses que celles imposées aux autres étrangers se rendant en Turquie et qu'elles soient remplies dans les conditions tendant à éviter tout retard inutile;

7° Les personnes désirant visiter le terrain ne devront pas être armées et le Gouvernement turc aura le droit de veiller à l'application de cette stricte interdiction;

8° Le Gouvernement turc devra être informé, au moins une semaine à l'avance, de l'arrivée de tout groupement de visiteurs dépassant 150 personnes.

ARTICLE 130.

Chacun des Gouvernements britannique, français et italien désignera une commission à laquelle les Gouvernements turc et hellénique délégueront un représentant, et qui sera chargée de régler sur place les questions concernant les sépultures, cimetières, ossuaires et monuments commémoratifs. Ces commissions seront notamment chargées de :

1° Reconnaître les zones où les inhumations ont été ou ont pu être faites, et constater les sépultures, cimetières, ossuaires et monuments existants;

2° Fixer les conditions dans lesquelles il sera procédé, s'il y a lieu, à des regroupements de sépultures; désigner, de concert avec le représentant turc en territoire turc, avec le représentant hellénique en territoire hellénique, les emplacements des cimetières de regroupement, des ossuaires et des monuments commémoratifs à établir; et déterminer les limites de ces emplacements en réduisant la surface occupée au minimum indispensable;

3° Notifier aux Gouvernements turc et hellénique, au nom de leurs Gouvernements respectifs, le plan définitif des sépultures, cimetières, ossuaires et monuments établis ou à établir pour leurs nationaux.

ARTICLE 131.

Les Gouvernements concessionnaires s'engagent à ne pas donner ni laisser donner aux terrains concédés d'autres usages que ceux ci-dessus visés. Si ces terrains sont situés au bord de la mer, le rivage n'en pourra être utilisé pour aucun but militaire, maritime ou commercial quelconque par le Gouvernement concessionnaire. Les terrains des sépultures et cimetières, qui seraient désaffectés et qui ne seraient pas utilisés pour l'érection de monuments commémoratifs, feront retour au Gouvernement turc ou, suivant le cas, au Gouvernement hellénique.

ARTICLE 132.

Les mesures législatives ou administratives nécessaires pour concéder aux Gouvernements britannique, français et italien la pleine et entière jouissance à perpétuité des terrains visés aux Articles 128 à 130, devront être prises respectivement par le Gouvernement turc et le Gouvernement hellénique dans les six mois qui suivront la notification prévu à l'Article 130, paragraphe 3°. Si des expropriations sont nécessaires, elles seront effectuées par les soins et aux frais des Gouvernements turc et hellénique sur leurs territoires respectifs.

ARTICLE 133.

Les Gouvernements britannique, français et italien seront libres de confier à tel organe d'exécution qu'ils jugeront convenable, l'établissement, l'aménagement et l'entretien des sépultures, cimetières, ossuaires et monuments de leurs ressortissants. Ces organes ne devront pas avoir de caractère militaire. Ils auront seuls le droit de faire procéder aux exhumations et transferts de corps jugés nécessaires pour assurer le regroupement des sépultures et l'établissement des cimetières et ossuaires ainsi qu'aux exhumations et transferts des corps dont les Gouvernements concessionnaires jugeraient devoir opérer le rapatriement.

ARTICLE 134.

Les Gouvernements britannique, français et italien auront le droit de faire assurer la garde de leurs sépultures, cimetières, ossuaires et monuments commémoratifs situés en Turquie, par des gardiens désignés parmi leurs ressortissants. Ces gardiens devront être reconnus par les autorités turques et devront recevoir le concours de ces dernières pour assurer la sauvegarde des sépultures, cimetières, ossuaires et monuments. Ils n'auront aucun caractère militaire, mais pourront être armés, pour leur défense personnelle, d'un revolver ou pistolet automatique.

ARTICLE 135.

Les terrains visés dans les Articles 128 à 131 ne seront soumis par la Turquie et les autorités turques, ou selon le cas par la Grèce et les autorités helléniques, à aucune espèce de loyer, taxe ou impôt. Leur accès sera libre en tout temps aux représentants des Gouvernements britannique, français et italien, ainsi qu'aux personnes désireuses de visiter les sépultures, cimetières, ossuaires et monuments commémoratifs. Le Gouvernement turc et le Gouvernement hellénique, respectivement, prendront à leur charge à perpétuité l'entretien des routes donnant accès auxdits terrains.

Le Gouvernement turc et le Gouvernement hellénique s'engagent respectivement à accorder aux Gouvernements britannique, français et italien toutes facilités pour leur permettre de se procurer la quantité d'eau nécessaire aux besoins du personnel affecté à l'entretien ou à la garde desdits cimetières, sépultures, ossuaires, monuments et pour l'irrigation du terrain.

ARTICLE 136.

Les Gouvernements britannique, français et Italien s'engagent à accorder au Gouvernement turc le bénéfice des dispositions des Articles 128 et 130 à 135 pour l'établissement des sépultures, cimetières, ossuaires et monuments commémoratifs des soldats et marins turcs reposant dans les territoires soumis à leur autorité, y compris ceux de ces territoires qui sont détachés de la Turquie.

3. DISPOSITIONS GÉNÉRALES.

ARTICLE 137.

Sauf stipulations contraires entre les Hautes Parties contractantes, les décisions prises ou les ordres donnés, depuis le 30 octobre 1918 jusqu'à la mise en vigueur du présent Traité, par ou d'accord avec les autorités des Puissances ayant occupé Constantinople et concernant les biens, droits et intérêts de leurs ressortissants, des étrangers ou des ressortissants turcs et les rapports des uns et des autres avec les autorités de la Turquie, seront réputés acquis et ne pourront donner lieu à aucune réclamation contre ces Puissances ou leurs autorités.

Toutes autres réclamations en raison d'un préjudice subi par suite des décisions ou ordres ci-dessus visés, seront soumises au Tribunal Arbitral Mixte.

ARTICLE 138.

En matière judiciaire seront réputés acquis, sans préjudice des dispositions des paragraphes IV et VI de la Déclaration en date de ce jour relative à l'amnistie, les décisions et ordres rendus en Turquie, depuis le 30 octobre 1918 jusqu'à la mise en vigueur du présent Traité, par tous juges, tribunaux ou autorités des Puissances ayant occupé Constantinople, ainsi que par la Commission

Judiciaire Mixte provisoire constituée le 8 décembre 1921, ensemble les mesures d'exécution.

Toutefois, dans le cas où une réclamation serait présentée par un particulier en réparation d'un préjudice subi par lui au profit d'un autre particulier en raison d'une décision judiciaire émanant en matière civile d'un tribunal militaire ou de police, cette réclamation sera soumise à l'examen du Tribunal Arbitral Mixte, qui pourra, s'il y a lieu, imposer le payement d'une indemnité et même ordonner une restitution.

ARTICLE 139.

Les archives, registres, plans, titres et autres documents de toute nature qui, concernant les administrations civiles, judiciaires ou financières ou l'administration des vakoufs et se trouvant en Turquie, intéressent exclusivement le gouvernement d'un territoire détaché de l'Empire ottoman et réciproquement ceux qui, se trouvant sur un territoire détaché de l'Empire ottoman, intéressent exclusivement le Gouvernement turc, seront réciproquement remis de part et d'autre.

Les archives, registres, plans, titres et autres documents ci-dessus visés, dans lesquels le gouvernement détenteur se considère comme également intéressé, pourront être conservés par lui, à charge d'en donner, sur demande, au gouvernement intéressé les photographies ou les copies certifiées conformes.

Les archives, registres, plans, titres et autres documents qui auraient été enlevés soit de la Turquie, soit des territoires détachés, seront réciproquement restitués en original, en tant qu'ils concernent exclusivement les territoires d'où ils auraient été emportés.

Les frais occasionnés par ces opérations seront à la charge du gouvernement requérant.

Les dispositions précédentes s'appliquent dans les mêmes conditions aux registres concernant la propriété foncière ou les vakoufs dans les districts de l'ancien Empire ottoman transférés à la Grèce postérieurement à 1912.

ARTICLE 140.

Les prises maritimes respectivement effectuées au cours de la guerre entre la Turquie et les autres Puissances contractantes et antérieures au 30 octobre 1918, ne donneront lieu de part et d'autre à aucune réclamation. Il en sera de même des saisies qui, postérieurement à cette date, auraient été, pour violation de l'armistice, effectuées par les Puissances ayant occupé Constantinople.

Il est entendu qu'aussi bien de la part des Gouvernements des Puissances ayant occupé Constantinople et de leurs ressortissants que de la part du Gouvernement turc et de ses ressortissants, aucune réclamation ne sera présentée relativement aux embarcations de tous genres, navires de faible tonnage, yachts et allèges, dont lesdits Gouvernements ont, les uns ou les autres, disposé depuis le 29 octobre 1914 jusqu'au 1er janvier 1923 dans leurs ports respectifs ou dans les ports occupés par eux. Toutefois, cette disposition ne portera pas atteinte aux dispositions du paragraphe VI de la Déclaration en date de ce jour relative à l'amnistie, non plus qu'aux revendications que des particuliers pourraient faire valoir contre d'autres particuliers en vertu de droits antérieurs au 29 octobre 1914.

Les navires sous pavillon turc, saisis par les forces helléniques postérieurement au 30 octobre 1918, seront restitués à la Turquie.

Article 141.

Par application de l'Article 25 du présent Traité et des Articles 155, 250 et 440 ainsi que de l'Annexe III, Partie VIII (Réparations) du Traité de paix de Versailles du 28 juin 1919, le Gouvernement et les ressortissants turcs sont déclarés libérés de tout engagement ayant pu leur incomber vis-à-vis du Gouvernement allemand ou de ses ressortissants relativement à tous navires allemands ayant été l'objet, pendant la guerre, d'un transfert par le Gouvernement ou des ressortissants allemands au Gouvernement ou à des ressortissants ottomans, sans le consentement des Gouvernements alliés, et actuellement en la possession de ces derniers.

Il en sera de même, s'il y a lieu, dans les rapports entre la Turquie et les autres Puissances ayant combattu à ses côtés.

Article 142.

La Convention particulière, conclue le 30 janvier 1923 entre la Grèce et la Turquie, relativement à l'échange des populations grecques et turques, aura entre ces deux Hautes Parties contractantes même force et valeur que si elle figurait dans le présent Traité.

Article 143.

Le présent Traité sera ratifié dans le plus court délai possible.

Les ratifications seront déposées à Paris.

Le Gouvernement japonais aura la faculté de se borner à faire connaître au Gouvernement de la République française par son représentant diplomatique à Paris que la ratification a été donnée et, dans ce cas, il devra transmettre l'instrument aussitôt que faire se pourra.

Chacune des Puissances signataires ratifiera par un seul et même instrument le présent Traité, ensemble les autres Actes signés par elle et prévus dans l'Acte final de la Conférence de Lausanne, en tant que ceux-ci requièrent une ratification.

Un premier procès-verbal de dépôt sera dressé dès que la Turquie, d'une part, et l'Empire britannique, la France, l'Italie, le Japon ou trois d'entre eux, d'autre part, auront déposé l'instrument de leur ratification.

Dès la date de ce premier procès-verbal, le Traité entrera en vigueur entre les Hautes Parties contractantes qui l'auront ainsi ratifié. Il entrera ensuite en vigueur pour les autres Puissances à la date du dépôt de leur ratification.

Toutefois, en ce qui concerne la Grèce et la Turquie, les dispositions des Articles 1, 2-2° et 5 à 11 inclusivement entreront en vigueur dès que les Gouvernements hellénique et turc auront déposé l'instrument de leur ratification, même si, à cette date, le procès-verbal ci-dessus visé n'a pas encore été dressé.

Le Gouvernement français remettra à toutes les Puissances signataires une copie authentique des procès-verbaux de dépôt des ratifications.

EN FOI DE QUOI, les Plénipotentiaires susnommés ont signé le présent Traité.

FAIT à Lausanne, le vingt-quatre juillet mil neuf cent vingt-trois, en un seul exemplaire qui sera déposé dans les archives du Gouvernement de la République Française, lequel en remettra une expédition authentique à chacune des Puissances contractantes.

(L. S.) Horace RUMBOLD.
(L. S.) PELLÉ.
(L. S.) GARRONI.
(L. S.) G. C. MONTAGNA.
(L. S.) K. OTCHIAÏ.
(L. S.) E. K. VÉNISÉLOS.
(L. S.) D. CACLAMANOS.
(L. S.) Const. DIAMANDY.
(L. S.) Const. CONTZESCO.

(L. S.) M. ISMET.
(L. S.) Dr. RIZA NOUR.
(L. S.) HASSAN.

V. CONVENTION COMMERCIALE

SIGNÉE LE 24 JUILLET 1923.

L'EMPIRE BRITANNIQUE, LA FRANCE, L'ITALIE, LE JAPON, LA GRÈCE, LA ROUMANIE, L'ÉTAT SERBE-CROATE-SLOVÈNE,

d'une part,

ET LA TURQUIE,

d'autre part,

Animés du désir d'établir leurs relations économiques sur la base du droit international et dans les termes les plus propres à encourager le commerce et à faciliter les échanges,

Ont résolu de conclure une convention à cette fin et ont nommé pour leurs Plénipotentiaires, savoir :

SA MAJESTÉ LE ROI DU ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE ET DES TERRITOIRES BRITANNIQUES AU DELÀ DES MERS, EMPEREUR DES INDES :

Le Très Honorable Sir Horace George Montagu Rumbold, Baronet, G. C. M. G., Haut-Commissaire à Constantinople ;

LE PRÉSIDENT DE LA RÉPUBLIQUE FRANÇAISE :

M. le Général de division Maurice Pellé, Ambassadeur de France, Haut-Commissaire de la République en Orient, Grand Officier de l'Ordre national de la Légion d'Honneur ;

SA MAJESTÉ LE ROI D'ITALIE :

L'Honorable Marquis Camille **Garroni**, Sénateur du Royaume, Ambassadeur d'Italie, Haut-Commissaire à Constantinople, Grand-Croix des Ordres des Saints Maurice et Lazare et de la Couronne d'Italie;

M. Jules César **Montagna**, Envoyé extraordinaire et Ministre plénipotentiaire à Athènes, Commandeur de l'Ordre des Saints Maurice et Lazare, Grand Officier de la Couronne d'Italie;

SA MAJESTÉ L'EMPEREUR DU JAPON :

M. Kentaro **Otchiaï**, Jusammi, Première classe de l'Ordre du Soleil Levant, Ambassadeur extraordinaire et plénipotentiaire à Rome;

SA MAJESTÉ LE ROI DES HELLÈNES :

M. Eleftherios K. **Vénisélos**, ancien Président du Conseil des Ministres, Grand-Croix de l'Ordre du Sauveur;

M. Démètre **Caclamanos**, Ministre plénipotentiaire à Londres, Commandeur de l'Ordre du Sauveur;

SA MAJESTÉ LE ROI DE ROUMANIE :

M. Constantin I. **Diamandy**, Ministre plénipotentiaire;
M. Constantin **Contzesco**, Ministre plénipotentiaire;

SA MAJESTÉ LE ROI DES SERBES, DES CROATES ET DES SLOVÈNES :

M. le Docteur Miloutine **Yovanovitch**, Envoyé extraordinaire et Ministre plénipotentiaire à Berne;

LE GOUVERNEMENT DE LA GRANDE ASSEMBLÉE NATIONALE DE TURQUIE :

Ismet Pacha, Ministre des Affaires étrangères, Député d'Andrinople ;

Le Docteur Riza Nour Bey, Ministre des Affaires sanitaire et de l'Assistance sociale, Député de Sinope ;
Hassan Bey, ancien Ministre, Député de Trébizonde ;

LESQUELS, après avoir exhibé leurs pleins pouvoirs reconnus en bonne et due forme, ont convenu des dispositions suivantes :

SECTION 1.

Article premier.

Dès la mise en vigueur de la présente Convention, les tarifs applicables, à leur importation en Turquie, aux produits naturels ou fabriqués, originaires et en provenance des territoires des autres pays contractants, seront ceux du tarif spécifique ottoman mis en vigueur le 1er septembre 1916.

Article 2.

Les droits inscrits au tarif ottoman du 1er septembre 1916, perçus en monnaie turque papier, seront, dans les conditions précisées ci-après, soumis à des coefficients de majoration périodiquement ajustés d'après le cours du change.

Ces coefficients seront ceux qui étaient en vigueur à la date du 1er mars 1923. Toutefois, les articles énumérés au tableau I annexe I seront soumis au coefficient 9.

Les coefficients ci-dessus visés seront adaptés d'après le taux de change conformément aux règles suivantes :

Ces coefficients ayant été fixés au moment où la livre sterling valait 745 piastres papier, si, pendant le mois qui précède la mise en vigueur de la présente Convention, la livre turque marque une revalorisation moyenne de plus de 30 p. 100 par rapport à ce taux, les coefficients 12 et 9 devront être diminués proportionnellement au taux moyen du même mois ; le coefficient ainsi ajusté demeurera valable pendant le trimestre suivant ; à l'expiration du trimestre, le coefficient sera, s'il y a lieu, réajusté d'après le taux de change moyen du dernier mois.

De même, si pendant le mois qui précède la mise en vigueur de la présente Convention, la livre turque marque une dévalorisation moyenne de plus de 30 p. 100 par rapport au taux initial de 745 piastres pour une livre sterling, les coefficients 12 et 9 pourront être augmentés proportionnellement au taux moyen du même mois; le coefficient ainsi ajusté demeurera valable pendant le trimestre suivant; à l'expiration du trimestre, le coefficient sera, s'il y a lieu, réajusté d'après le taux de change moyen du dernier mois.

Le coefficient 5 pourra être augmenté en cas de dévalorisation de la livre turque dans les mêmes conditions que les coefficients 12 et 9, mais, dans le cas de revalorisation de la livre turque, il ne devra être diminué qu'à partir du moment où la livre sterling vaudrait moins de 5 livres turques papier.

En cas de réforme monétaire, les divers coefficients ci-dessus fixés seraient modifiés en fonction de la différence entre la nouvelle monnaie et l'ancienne, de manière à ne pas altérer l'incidence des droits de douane.

ARTICLE 3.

La Turquie s'engage à supprimer dès la mise en vigueur de la présente Convention et à ne pas rétablir ensuite pendant la durée de la présente Convention, toutes prohibitions d'importations ou d'exportations autres que celles qui pourraient être nécessaires pour :

1° réserver les ressources indispensables à la vie alimentaire et sauvegarder l'activité économique de la nation;

2° assurer la sécurité de l'Etat;

3° préserver les personnes, les animaux et les plantes contre les maladies contagieuses, épizooties et épiphyties;

4° empêcher l'usage de l'opium et autres toxiques;

5° interdire l'importation des produits alcooliques dont l'usage est prohibé en Turquie;

6° empêcher l'exportation de la monnaie d'or ou du métal or;

7° établir ou maintenir des monopoles d'Etat.

A condition qu'une équitable réciprocité lui soit accordée par chacune des autres Puissances contractantes, aux termes de sa législation, la Turquie s'engage à appliquer les prohibitions, sans discrimination d'aucune sorte, et, au cas où elle accorderait des dérogations ou licences pour des produits prohibés, à ne point favoriser le commerce d'une autre Puissance contractante ou d'une

Puissance quelconque au détriment du commerce d'aucune Puissance contractante.

Article 4.

Sous condition de réciprocité, aucun droit de consommation ou d'accise ne sera applicable en Turquie aux marchandises originaires et en provenance des autres pays contractants que dans la mesure où il est perçu sur des articles identiques ou similaires produits en Turquie.

En outre, la Turquie pourra continuer à percevoir, dans les mêmes conditions d'égalité entre ses ressortissants et les ressortissants des autres pays contractants, pour les produits énumérés au tableau de l'Annexe II, les droits de consommation indiqués audit tableau.

Sous condition de réciprocité, les droits d'octroi ou toute autre taxe perçue par les autorités locales seront, s'ils sont imposés à des articles produits en Turquie, appliqués sans discrimination entre les produits turcs et les produits originaires et en provenance des autres pays contractants, et s'ils sont imposés à des articles non produits en Turquie, appliqués de même, sans discrimination d'aucune sorte, à tous les produits étrangers identiques ou similaires, quelles que soient leur origine et leur provenance.

Article 5.

Sous condition d'une équitable réciprocité que chacune des autres Puissances contractantes accordera à la Turquie, conformément à sa législation, tout droit d'exportation que la Turquie aura établi ou pourrait établir sur un produit quelconque, naturel ou fabriqué, sera également appliqué à tous pays destinataires, sans que, par aucun moyen, il puisse être institué une discrimination au détriment du commerce de l'une quelconque des autres Puissances contractantes.

Article 6.

La Turquie fera bénéficier les autres Parties contractantes de tout traitement plus favorable que, pour les matières visées aux Articles 1 à 5, elle appliquerait à tout autre pays, à l'exclusion toutefois des avantages spéciaux qu'en matière de tarifs ou généralement en toute autre matière commerciale, elle appliquerait à l'un quelconque des territoires détachés de la Turquie en vertu du Traité de Paix en date de ce jour, ou, pour le trafic frontière, à un Etat limitrophe.

ARTICLE 7.

La Turquie et les autres Puissances contractantes pourront exiger respectivement, pour établir le pays d'origine des produits importés, la présentation par l'importateur d'un certificat officiel constatant que l'article importé est de production et de fabrication nationales dudit pays, ou qu'il doit être considéré comme tel, étant donné la transformation qu'il y a subie.

Les certificats d'origine, établis d'après le modèle annexé à la présente Section sous le n° III, seront délivrés soit par le Ministère du Commerce ou celui de l'Agriculture, soit par la Chambre de commerce dont relève l'expéditeur, soit par tout autre organe ou groupement que le pays destinataire aura agréé. Ils seront légalisés par un représentant diplomatique ou consulaire du pays destinataire.

Les colis postaux seront dispensés du certificat d'origine quand le pays destinataire reconnaîtra qu'il ne s'agit pas d'envoi revêtant un caractère commercial.

ARTICLE 8.

Le bénéfice des dispositions de la présente Section ne pourra toutefois être réclamé par aucune des Puissances contractantes qui n'accorderait pas à la Turquie pendant toute la durée de la Convention un traitement aussi favorable que celui qu'elle accorde à tout autre pays étranger.

ANNEXE I.

LISTE DES ARTICLES SOUMIS AU COEFFICIENT 9.

NUMÉROS DU TARIF.	
65	Pommes de terre.
69	Oranges.
121	Préparations sucrées.
130	Eaux minérales.
178	Peaux vernies.
180	Peaux de porc.
185-187-188	Chaussures.
191	Gants.
200-201	Pelleteries brutes ou ouvrées.
217-218	Meubles.
273-274-275	Broderies, dentelles et rubans de coton.

NUMÉROS DE TARIF.	
302	Bourre de soie.
305	Gaze, etc.
306	Tulle de soie, etc.
308	Tissus de soie.
311-312	Bonneterie de soie.
314	Passementerie de soie.
324	Châles et ceintures de laine.
339	Vêtements
348	Ombrelles, parapluies, parasols, etc

ANNEXE II.

TAXES DE CONSOMMATION.

Thé	40	piastres par kilo.
Café	20	—
Pétrole	6	—
Riz	10	—
Margarine, oléomargarine et autres graisses animales	80	—
Bougies de stéarine	30	—
Savon ordinaire	5	—
Sacs neufs et usagés	5	—
Epices	30	—
Allumettes	1/2	piastre la boîte de 60 allumettes.
Allumettes bougies	1	piastre la boîte de 60 allumettes.
Papier à cigarettes	1	piastre 30 feuilles.
Briquets	25	piastres par briquet.
Sucre	15	piastres par kilo.
Biscuits Chocolat Lait condensé Confiserie et glucose Boissons non alcooliques, gazeuses et limonades Tous autres produits sucrés		soumis à la taxe de consommation d'après le pourcentage de sucre conetnu.
Tombac	40	piastres par kilo.

ANNEXE III.

MODÈLE DE CERTIFICAT D'ORIGINE.

Nous (autorité qui délivre le certificat) [1] certifions que :

M. . . . .
Producteur ou fabricant,
Fondé de pouvoir de M. . . . . domicilié à. . . . .
Négociant patenté, (2)

**domicilié à . . . .
a déclaré devant nous, sous sa responsabilité, que les marchandises ci-dessous désignées sont d'origine ou de fabrication (turque ou . . . .), conformément aux documents dignes de foi qui nous ont été présentés par l'expéditeur (3). Ces marchandises sont envoyées à . . . . à la consignation de M. . . . . . . commerçant ou industriel à . . . .
par (les voies de terre ou navire . . . .).**

NOMBRE ET CATÉGORIE des colis.	MARQUES NUMÉRO.	POIDS BRUT ET NET (en kilogrammes) ou mesure de capacité et de valeur.	ESPÈCE DES MARCHANDISES.

Ainsi affirmé sous ma responsabilité, le . . . .
(Signature du déclarant.)

Confirmé par nous (autorité qui délivre le certificat) qui attestons en outre que la vente des marchandises désignées ci-dessus a été effectivement conclue en ce pays.
(Date et signature de l'autorité qui délivre le certificat).

Vu au consulat de . . . . pour légalisation de la présente signature.
(Date, signature et sceau du Consulat).

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(1) Les certificats seront délivrés, soit par les Ministères du Commerce ou de l'Agriculture, soit par la Chambre de Commerce dont relève l'expéditeur, soit par tout autre organe ou groupement que le pays destinataire aura agréé.

(2) Rayer les mentions inutiles.

(3) Quand le certificat sera levé par le producteur ou fabricant ainsi que par son fondé de pouvoir, on supprimera les mots «conformément aux documents dignes de foi qui nous ont été présentés par l'expéditeur».

SECTION 2.

ARTICLE 9.

La Turquie s'engage, à condition qu'un traitement réciproque lui soit accordé en la matière, à accorder aux navires des autres Puissances contractantes un traitement égal à celui qu'elle accorde aux navires nationaux ou un traitement plus favorable qu'elle accorde ou pourrait accorder aux navires de toute autre Puissance.

La Turquie conserve à l'égard de chacune des autres Puissances contractantes, et chacune de celles-ci conserve à l'égard de la Turquie, le droit de réserver à son pavillon la pêche, le cabotage maritime, c'est-à-dire le transport par mer de marchandises et voyageurs embarqués dans un port de son territoire vers un autre port du même territoire, et les services des ports, c'est-à-dire le remorquage, le pilotage et tous services intérieurs de quelque nature que ce soit.

ARTICLE 10.

Sous réserve des exceptions prévues à l'article précédent pour la pêche, le cabotage maritime et les services des ports, un traitement égal à celui des navires nationaux sera accordé à titre réciproque par la Turquie, d'une part, et chacune des autres Parties contractantes, d'autre part, en ce qui concerne le droit d'importer ou d'exporter toute espèce de marchandises ou de transporter les voyageurs à destination ou en provenance du pays, et la jouissance de toutes facilités quant au stationnement, au chargement et au déchargement des vaisseaux aux ports, docks, quais et rades.

Il y aura aussi une égalité absolue, sous la même condition de réciprocité, en ce qui concerne les droits, charges et payements de toute espèce prélevés sur les navires, comme les droits sanitaires, les droits de port, de quai, de mouillage, de pilotage, de quarantaine, de phares et autres droits similaires, perçus au nom ou au profit du Gouvernement, de fonctionnaires, des individus privés, des associations ou des établissements de toute espèce.

La Turquie s'engage de même, et moyennant réciprocité, à ne grever les marchandises importées ou exportées d'aucun droit différentiel, surtaxe ou majoration, de quelque nature ou sous quelque dénomination que ce soit, fondés sur le pavillon du navire importateur ou exportateur, sur les ports d'arrivée ou de départ, sur le voyage du navire ou sur les escales, les droits et taxes imposables aux marchandises importées ou exportées n'étant déterminés que par leur origine et provenance ou leur destination et étant également applicables pour toutes les autres Puissances contractantes, en vertu des dispositions de la Section 1.

ARTICLE 11.

Toute espèce de certificats ou de documents ayant rapport aux navires et bateaux, à leurs cargaisons et à leurs passagers, qui étaient reconnus comme valables par la Turquie avant la guerre ou qui pourront ultérieurement être reconnus comme valables par les principaux Etats maritimes, seront reconnus par la Turquie, vis-à-vis des navires ressortissants aux autres Puissances contractantes, comme valables et comme équivalant aux certificats correspondants octroyés à des navires et bateaux turcs.

Ces stipulations ne seront valables que si les certificats et documents délivrés par la Turquie aux navires et bateaux turcs, dans des conditions équivalant à celles pratiquées dans les principaux pays maritimes, sont considérés par les autres Parties contractantes comme équivalant aux certificats et documents délivrés par elles-mêmes.

SECTION 3.

ARTICLE 12.

La Turquie s'engage, à condition de réciprocité, à prendre toutes les mesures législatives ou administratives et à permettre tout recours en justice à l'effet de garantir les produits naturels ou fabriqués, originaires de l'une quelconque des autres Puissances contractantes contre toute forme de concurrence déloyale dans les transactions commerciales.

La Turquie s'engage de même, à condition de réciprocité, à réprimer et à prohiber par des sanctions appropriées l'importation ou l'exportation, ainsi que la fabrication, la circulation, la vente et la mise en vente à l'intérieur, de tous produits ou marchandises qui portent sur eux-mêmes ou sur leur conditionnement immédiat ou sur leur emballage extérieur des marques, noms, inscriptions ou signes quelconques comportant, directement ou indirectement, de fausses indications sur l'origine, l'espèce, la nature ou les qualités spécifiques de ces produits ou marchandises.

ARTICLE 13.

La Turquie, à la condition qu'un traitement réciproque lui soit accordé en cette matière, s'engage à se conformer aux lois, ainsi qu'aux décisions administratives ou judiciaires prises conformément à ces lois, en vigueur dans un autre pays contractant et régulièrement notifiées à la Turquie par les autorités compétentes, déterminant ou réglementant le droit à une appellation régionale pour les produits qui tirent du sol ou du climat leurs qualités spécifiques ou les conditions dans lesquelles l'emploi d'une appellation régionale peut être autorisé; et l'importation, l'exportation ainsi que la fabrication, la circulation, la vente ou mise en vente des produits ou marchandises portant des appellations régionales, contrairement aux lois ou décisions précitées, seront interdites par la Turquie et réprimées par les mesures prescrites à l'Article 12.

ARTICLE 14.

La Turquie s'engage, avant l'expiration d'un délai de douze mois à partir de la mise en vigueur de la présente Convention :

1° à adhérer, dans les formes prescrites, à la Convention internationale de Paris du 20 mars 1883 pour la protection de la propriété industrielle, revisée à Washington le 2 juin 1911;

2° à adhérer également à la Convention internationale de Berne du 9 septembre 1886 pour la protection des œuvres littéraires et artistiques, revisée à Berlin le 13 novembre 1908, ainsi qu'au Protocole additionnel de Berne du 20 mars 1914, relatif à la protection des œuvres littéraires et artistiques.

Les autres Puissances signataires de la présente Convention ne feront pas opposition pendant la durée de la présente Convention à la réserve que la Turquie déclare formuler en ce qui touche les dispositions des Conventions et Protocole précités relatives au droit de traduction en langue turque, si les autres Puissances cosignataires de ces Conventions et Protocole n'ont élevé elles-mêmes aucune opposition contre ladite réserve au cours de l'année qui suivra la mise en vigueur de la présente Convention.

Dans le cas où les Puissances signataires de la présente Convention ne pourraient maintenir leur adhésion à la réserve turque relative au droit de traduction, la Turquie ne serait pas tenue de maintenir son adhésion aux Conventions et Protocole ci-dessus mentionnés;

3° dès avant l'expiration du même délai, à reconnaître et protéger par législation effective conformément aux principes desdites Conventions, la propriété industrielle, littéraire et artistique des nationaux des autres Puissances contractantes.

ARTICLE 15.

Des conventions spéciales entre les pays intéressés régleront toutes questions concernant les archives, registres et plans relatifs au service de la propriété industrielle, littéraire et artistique, ainsi que leur transmission ou communication éventuelle par les offices de la Turquie aux offices des Etats en faveur desquels des territoires sont détachés de la Turquie.

DISPOSITIONS GÉNÉRALES.

ARTICLE 16.

Les Puissances contractantes se réservent le droit de déclarer au moment de la mise en vigueur de la présente Convention que les dispositions de ladite Convention ne s'appliqueront pas à tout ou partie de leurs Dominions jouissant d'un gouvernement autonome, de leurs colonies, pays de protectorat, possessions ou territoires d'outre-mer soumis à leur souveraineté ou autorité et, dans ce cas, la Turquie serait déliée des obligations qui résultent pour elle de la présente Convention envers lesdits Dominions, colonies, pays de protectorat, possessions et territoires.

Toutefois, lesdites Puissances pourront adhérer ultérieurement, au nom de tout Dominion jouissant d'un gouvernement autonome, colonie, pays de protectorat, possession ou territoire, pour lesquels elles auraient, aux termes de la présente Convention, fait une déclaration qui l'excluait.

ARTICLE 17.

Les marchandises et produits originaires ou à destination de la Libye seront soumis en Turquie au même régime que les marchandises et produits italiens.

Les marchandises et produits originaires ou à destination de la Turquie jouiront en Libye du traitement le plus favorable accordé à tout autre pays étranger.

ARTICLE 18.

La présente Convention est conclue pour une durée de cinq ans.

En ce qui concerne la Section 1, la Turquie, d'une part, la Grèce, la Roumanie et l'Etat Serbe-Croate-Slovène, d'autre part, reconnaissant la nécessité de procéder dans un délai plus bref à l'établissement d'un statut nouveau pour leurs échanges commerciaux, sont d'accord pour se reconnaître le droit de dénoncer la présente Convention à tout moment après l'expiration d'une première période de trente mois; les effets de ladite Convention devant prendre fin six mois après la dénonciation.

La Turquie, d'une part, et chacune des autres Parties contractantes, d'autre part, s'engagent à entreprendre, à tout moment au cours des périodes ci-dessus fixées pour l'application de la Convention et dès que la demande leur en sera faite, des négociations qu'elles poursuivront ensuite activement pour en assurer l'aboutissement avant l'expiration desdites périodes, en vue de la conclusion de nouveaux traités de commerce.

Si lesdites négociations n'avaient point abouti avant l'expiration des délais ci-dessus prévus, chacune des Hautes Parties contractantes pourra reprendre sa liberté d'action.

ARTICLE 19.

LA PRÉSENTE CONVENTION sera ratifiée.

Les ratifications en seront déposées à Paris aussitôt que faire se pourra.

Elle entrera en vigueur dans les mêmes conditions que le Traité de Paix en date de ce jour.

EN FOI DE QUOI, les Plénipotentiaires susnommés ont signé la présente Convention.

FAIT à Lausanne, le 24 juillet 1923, en un seul exemplaire qui sera déposé dans les archives du Gouvernement de la République française, lequel en remettra une expédition authentique à chacune des Puissances signataires.

(L. S.) HORACE RUMBOLD.
(L. S.) PELLÉ.
(L. S.) GARRONI.
(L. S.) G. C. MONTAGNA.
(L. S.) K. OTCHIAÏ.
(L. S.) E. K. VÉNISÉLOS.
(L. S.) D. CACLAMANOS.
(L. S.) CONST. DIAMANDY.
(L. S.) CONST. CONTZESCO.

(L. S.) M. ISMET.
(L. S.) DR. RIZA NOUR.
(L. S.) HASSAN.

Annex 21

PROTOCOL BETWEEN FRANCE AND GREAT BRITAIN DEFINING THE BOUNDARY BETWEEN FRENCH EQUATORIAL AFRICA AND THE ANGLO-EGYPTIAN SUDAN OF 10 JANUARY 1924

FO 371/10025

PROTOCOL

THE undersigned, duly appointed by their respective Governments as Commissioners in execution of paragraph 4 of the Declaration signed in London on the 21st March, 1899, completing the Convention between Great Britain and France signed in Paris on the 14th June, 1898, to delimit on the spot the frontier line between French Equatorial Africa and the Anglo-Egyptian Sudan, in accordance with the indications given in paragraph 2 of that Declaration as amplified by the Supplementary Convention signed at Paris on the 8th September, 1919, after examining and recording their agreement as to the geodetic and topographical details, have drawn up the protocol which follows.

SECTION I.

(*a*.) The frontier of the Anglo-Egyptian Sudan and French Equatorial Africa starts from a beacon made of a heap of stones about 5 metres high, called "The meeting point of the three frontiers." The co-ordinates of this beacon are Latitude 05° 01′ 10″ North and Longitude 27° 26′ 37″ East of Greenwich. From this point the frontier follows the water-parting between the basin of the Nile and that of the Congo, as described below.

(*b*.) The frontier passes 200 metres to the west of the astronomically fixed beacon of Yubo (Youbo), Latitude 05° 23′ 26″ North and Longitude 27° 14′ 52″ East.

(*c*.) Thence it continues towards the north, passing about 200 metres to the west of the

PROTOCOLE

LES soussignés dûment désignés comme Commissaires par leurs Gouvernements respectifs en exécution du paragraphe 4 de la Déclaration signée à Londres, le 21 mars 1899, Déclaration complétant la Convention entre la Grande-Bretagne et la France, signée à Paris le 14 juin 1898, chargés de délimiter sur le terrain la ligne frontière entre l'Afrique Équatoriale Française et le Soudan Anglo-Égyptien en se conformant aux indications données au paragraphe 2 de cette Déclaration modifiée par la Convention supplémentaire signée à Paris le 8 septembre 1919, après avoir examiné les travaux géodésiques et topographiques et constaté leur concordance, ont rédigé le présent protocole.

SECTION I.

(*a*.) La frontière du Soudan Anglo-Égyptien et de l'Afrique Équatoriale Française part d'un signal, constitué par un tas de pierres haut de 5 mètres environ, appelé "point de jonction des trois frontières." Ses coordonnées sont : Latitude 05° 01′ 10″ nord et Longitude 27° 26′ 37″ est de Greenwich. À partir de ce point, elle suit la ligne de partage des eaux entre le bassin du Nil et celui du Congo ci-dessous déterminée.

(*b*.) Elle passe à 200 mètres à l'ouest du signal astronomique de Youbo (Yubo), Latitude 05° 23′ 26″ nord, Longitude 27° 14′ 52″ est.

(*c*.) Elle se prolonge vers le nord en passant à 200 mètres environ à l'ouest du grand tas de large heap of stones which marks the astronomically fixed point of Kumu (Koumou), Latitude 05° 50′ 19″ North and Longitude 27° 01′ 28″ East.

(*d.*) From this point it proceeds in the direction of the astronomically fixed beacon of Komo, and passes about 150 metres to the south of the heap of stones which marks that beacon at Latitude 06° 01′ 44″ North and Longitude 26° 34′ 47″ East. Thence, bending to the west, the frontier follows the watershed as far as the sources of the river Pilliamo. It leaves Hagar Daragumba (Daragoumba) to the east and again bends westwards to pass to the east of the point called Gangura (Gangoura) which lies in French territory. Thence, keeping always to the water-parting, the frontier passes between the sources of the Busseri (Bousseri) and the Golinga to Goz Bondi; thence to about 3 kilometres south of the beacon on Goz Dengwiri (Dinguiri) which is formed by a tree and a small heap of stones and whose coordinates are Latitude 06° 43′ 51″ North and Longitude 26° 19′ 36″ East.

(*e.*) The frontier then runs to a point 1 kilometre south-west of the Bira beacon, Latitude 07° 01′ North and Longitude 26° 01′ East, leaving the sources of the Warra (Ouara) to the west.

(*f.*) From this point it runs about 2 kilometres south of the Bibi beacon, Latitude 07° 10′ 49″ North and Longitude 25° 46′ 18″ East.

(*g.*) Keeping always to the water-parting, the frontier then runs to about 2 kilometres south of the Robo beacon, Latitude 07° 14′ 02″ North and Longitude 25° 37′ 42″ East.

(*h.*) Thence it runs to a conspicuous rock, a point in the

pierres qui marque le signal astronomique de Koumou (Kumu), Latitude 05° 50′ 19″ nord et Longitude 27° 01′ 28″ est.

(*d.*) Elle remonte dans la direction du signal astronomique de Komo ; elle passe à 150 mètres environ au sud du tas de pierres du signal, Latitude 06° 01′ 44″ nord et Longitude 26° 34′ 47″ est. Elle suit la ligne de crête en s'infléchissant vers l'ouest jusqu'aux sources de la rivière Pilliamo ; elle laisse à l'est le Hadjer Daragoumba (Daragumba) et s'infléchit de nouveau à l'ouest pour passer à l'est du point de Gangoura (Gangura) qui est en territoire français. Ensuite, elle passe, toujours sur la ligne de partage des eaux, entre les sources du Bousseri (Busseri) et du Golinga : de là, au Goz Bondi ; puis à environ 3 kilomètres au sud du signal du Goz Dinguiri (Dengwiri) formé d'un arbre et d'un petit tas de pierres, Latitude 06° 43′ 51″ nord et Longitude 26° 19′ 36″ est.

(*e*) La frontière laisse à l'ouest les sources du Ouara (Warra) et passe à 1 kilomètre au sud-ouest du signal de Bira, Latitude 07° 01′ nord et Longitude 26° 01′ est.

(*f.*) De là, elle passe à 2 kilomètres environ au sud du signal de Bibi, Latitude 07° 10′ 49″ nord et Longitude 2° 46′ 18″ est.

(*g.*) Toujours suivant la ligne de partage des eaux, elle passe à 2 kilomètres environ au sud du signal de Robo, Latitude 07° 14′ 02″ nord et Longitude 25° 37′ 42″ est.

(*h.*) Elle passe ensuite à un rocher remarquable, point de la

French chain of triangulation, whose co-ordinates are Latitude 07° 20′ 54″ North and Longitude 25° 23′ 50″ East. Thence, separating the valley of the Sopo from that of the Vovodo, it reaches another point in the same chain of triangulation situated on a laterite outcrop whose co-ordinates are Latitude 07° 50′ 34″ North and Longitude 25° 14′ 34″ East.

(*i.*) From this point it passes about 2 kilometres east of the Kurumwa (Kourouma) beacon and then about 2 kilometres north of the triangulation beacon on Jebel Amborogo.

(*j.*) It then runs about 1 kilometre north of the Kudungeri (Koudomguéré) beacon. Thence it runs to the Ambuyuju (Ambouyoudiou) beacon, leaving the sources of the Duyu (Douyou) on the French side, and thence to Jebel Gingamba (Djimgamba). Thence, separating the valley of the Boro from that of the Wadi Va, it passes through a triangulation beacon in Latitude 08° 26′ 43″ North and Longitude 24° 09′ 51″ East. It then passes through the triangulation beacon of Abu Rassein (Abou Rassein).

(*k.*) It then passes round the sources of the Wadi Va and runs about 4 kilometres north of the beacon of Kiuku (Kioukou). It then runs about 3 kilometres south of the triangulation beacon of Jebel Hamid and thence to the triangulation beacon on Jebel Gawarra (Gaoura). Thence, passing round the sources of the Adda, it runs to the beacon of Rumbukindi (Roumboukindi).

(*l.*) Thence it runs to the beacon on Jebel Busu (Bouzou). From this point it passes to the west of the beacon in the English triangulation chain called Jebel

chaîne géodésique française dont les coordonnées sont : Latitude 07° 20′ 54″ nord, Longitude 25° 23′ 50″ est. Elle se prolonge en séparant la vallée du Sopo de celle du Vovodo et elle atteint un nouveau point géodésique de la même chaîne placé sur une table de latérite, dont les coordonnées sont : Latitude 07° 50′ 34″ nord et Longitude 25° 14′ 34″ est.

(*i.*) De ce point, elle passe à 2 kilomètres environ à l'est du signal de Kourouma (Kurumwa) et à 2 kilomètres environ au nord du signal géodésique de Amborogo.

(*j.*) Elle ensuite à 1 kilomètre environ au nord du signal de Koudomguéré (Kudungeri). De là, elle atteint le signal de Ambouyoudiou (Ambuyuju) en laissant du côté français les sources de la Douyou (Duyu). Puis elle se dirige sur le Djebel Djimgamba (Gingamba). Elle passe ensuite à un signal géodésique, Latitude 08° 26′ 43″ nord et Longitude 24° 09′ 51″ est en séparant la vallée du Boro de celle de l'Ouadi Va. Elle passe au signal géodésique de l'Abou Rassein (Abu Rasein).

(*k.*) Elle contourne ensuite les sources de l'Ouadi Va pour passer à environ 4 kilomètres au nord du signal de Kioukou (Kiuku). Elle passe ensuite à 3 kilomètres environ au sud du signal géodésique du Djebel Hamid. Elle atteint de là le signal géodésique du Djebel Gaoura (Gawarra). Puis contournant les sources de l'Adda elle passe au signal de Roumboukindi (Rumbukindi).

(*l.*) Elle passe ensuite au signal du Djebel Bouzou (Busu). De ce point elle passe à l'ouest du signal de la chaîne anglaise appelé Djebel Moho en atteint le

Moho and reaches the triangulation beacon which has as co-ordinates Latitude 09° 04' 58" North and Longitude 23° 27' 42" East.

(*m.*) It separates the sources of the Umbelasha (Oum Balatcha) from the sources of the Kotto or Meini, and after passing about 6 kilometres south of Jebel Guma (Gouma), reaches Jebel Tinga, upon which is a triangulation beacon.

SECTION II.

(*a.*) Thence it follows the water-parting between the Wadis Umbelasha (Oum Balatcha) and Khudra (Khadra) on the one side and the River Kara or Yata on the other in a northernly direction to the beacon on Jebel Kumu, Latitude 09° 33' 33" North and Longitude 23° 37' 49" East.

(*b.*) Thence it runs in a straight line in a north-north-easterly direction to the beacon on Jebel Mishmira (Michemir), Latitude 09° 40' 17" North and Longitude 28° 41' 48" East.

(*c.*) Thence in runs in a straight line a little west of north to the beacon on Jebel Yarra.

(*d.*) Thence it runs in a north-westerly direction in a straight line to the chief watering place on the east side of the depression of Um Dafog (Am Dofog).

(*e.*) From this point the frontier line runs in a north-westerly direction at a distance of 1 kilometre to the east of, and parallel to, the road which passes from Um Dafog (Am Dofog) to Lake Tisi (Tizi) by Rahad Dihn (Dihin), Rahad Sahabain (Sahabeia), Rahad Summa (Soumou), Rahad Kujufu (Koudioufou) and Rahad Boarig (Bonrit) to a point 1 kilometre east of the eastern extremity of Lake Tisi (Tizi).

signal géodésique qui a pour coordonnées Latitude 09° 04' 58" nord et Longitude 23° 27' 42" est.

(*m.*) Elle sépare les sources de l'Oum Balatcha (Umbelasha) des sources de la Kotto ou Meini, passe à 6 kilomètres environ au sud du Djebel Gouma (Guma) et atteint ensuite le Djebel Tinga, sur lequel se trouve un signal géodésique.

SECTION II.

(*a.*) Elle suit ensuite la ligne de partage des eaux entre les Oueds Oum Balatcha (Umbelasha) et Khadra (Khudra) d'un côté et la rivière Kara ou Yata de l'autre dans la direction du nord jusqu'au Djebel Koumou (Kumu), Latitude 09° 33' 33" nord et Longitude 23° 37' 49" est.

(*b.*) De là en ligne droite en direction du nord-nord-est elle va au signal géodésique du Djebel Michemir (Mishmira), Latitude 09° 40' 17" nord et Longitude 28° 41' 48" est.

(*c.*) De là en ligne droite dans une direction légèrement nord-nord-ouest au signal du Djebel Yarra.

(*d.*) Ensuite en direction nord-ouest et en ligne droite au point d'eau principal situé à l'extrémité est de la mare d'Am Dofog (Um Dafog).

(*e.*) De ce point la frontière court en direction nord-ouest à une distance de 1 kilomètre à l'est de la route qui va d'Am Dofog (Um Dafog) à la mare de Tizi (Tisi) par Rahad Dihin (Dihn) Rahad Sahabeia (Sahabain), Rahad Soumou (Summa), Rahad Koudioufou (Kujufu) et Rahad Bonrit (Boarig) et parallèlement à celle-ci jusqu'à un point situé à 1 kilomètre à l'est de l'extrémité orientale de la mare de Tizi (Tisi).

(*f*.) From this point it runs in a straight line to the beacon on Jebel Keili.

(*g*.) Thence it runs in a straight line to the pool of Nzili.

(*h*.) The tribes or individuals belonging to the Sudan shall have the right to water at the Rahads along the above-mentioned road and at Tisi (Tizi).

SECTION III.

(*a*.) The frontier, on leaving the pool of Nzili, runs in a straight line north-eastwards to a small jebel situated 6 kilometres to the east of the triangulation beacon on Jebel Laja (Ladja).

(*b*) From there it takes a northerly direction and passes in a straight line to the summit of Jebel Eberei, which is 9 kilometres north-east from the triangulation beacon on Jebel Laja (Ladja).

(*c*.) From this point it runs in a straight line in a north-westerly direction to the conspicuous rocks situated on the road from Muterr (Mouterr) to Gilambeir (Guileimber), about 3 kilometres away from the latter village.

(*d*) Running thence in a straight line, the frontier takes a northerly course, crosses Wadi Seirgilong (Serguilong), and runs to the summit of Jebel Kullua (Kouloua), leaving the village of Sarafaia on the French side.

(*e*.) From this summit it runs in a westerly direction in a straight line to the top of Hagar Tugula (Tougoula).

(*f*.) From Hagar Tugula (Tougoula) it runs in a straight line towards the south-west to the junction of the Wadi Marafang (Marafaing) or Mundangya (Moundangya) with the Wadi Lujugo (Loudjouga).

(*g*.) From this point it runs in a straight line in a north-north-

(*f*.) De là la frontière va en ligne droite au signal géodésique du Djebel Keili.

(*g*) Puis en ligne droite à la mare de Nzili.

(*h*.) Les tribus ou individus appartenant au Soudan auront le droit de faire de l'eau aux rahads situées sur la route ci-dessus mentionnée et à la mare de Tizi (Tisi).

SECTION III.

(*a*.) La frontière quitte cette mare pour atteindre en ligne droite, dans la direction du nord-est, un petit djebel situé à 6 kilomètres à l'est du signal géodésique du Djebel Ladja (Laja).

(*b*.) De là, toujours en ligne droite, elle prend la direction nord et passe au sommet du Djebel Eberei, qui se trouve à 9 kilomètres au nord-est du signal géodésique de Ladja (Laja).

(*c*.) De ce point, elle passe en ligne droite et en direction nord-ouest aux rochers remarquables qui se trouvent sur la route de Mouterr (Muterr) à Guileimber (Gilambeir), à 3 kilomètres environ de ce dernier village.

(*d*.) De là, en ligne droite, elle prend la direction du nord, coupe l'Oued Serguilong (Seirgilong), laisse du côté français le village de Sarafaïa et passe au sommet du Djebel Kouloua (Kullua).

(*e*.) De ce sommet dans la direction de l'ouest, elle va en ligne droite au sommet du Hadjer Tougoula (Tugula).

(*f*.) Du Hadjer Tougoula (Tugula), en ligne droite, elle va vers le sud-ouest au confluent de l'Oued Marafaing (Marafang) ou Moundangya (Mundangya) et de l'Oued Loudjouga (Lujugo).

(*g*.) De ce point, allant en direction nord-nord-est et en easterly direction and cuts the road from Mundangya (Moundangya) to Lujugo (Loudjouga) half way between those villages.

(*h.*) Running thence in a north-westerly direction in a straight line it cuts the road from Mundangya (Moundangya) to Timassi half way between those villages.

(*i.*) Thence it runs in a north-westerly direction in a straight line to the point where the Wadi Mundangya (Moundangya) cuts the road from Komoru (Koumorro) to Timassi.

(*j.*) After this the frontier takes a west-north-westerly direction and runs in a straight line to a "murrais" tree situated on the Wadi Kajul (Kadjoul) at about 1 kilometre south of the village of Siarrei.

(*k.*) Thence it runs in a north-westerly direction in a straight line to the summit of Hagar Dakandei, which is about 7 kilometres distant from this "murrais" tree. It then takes a north-north-westerly direction, and runs in a straight line to the summit of Hagar Mirsi.

(*l.*) From Hagar Mirsi the frontier runs northwards in a straight line to a clearing on the track from the village of Babel or Muda West (Mouda Ouest) to the village of Fofogiat (Fogfogui), which clearing is about 3 kilometres from the village of Babel.

(*m.*) From this point it runs in a north-north-easterly direction in a straight line to the Boundary Tree (Latitude 11° 47′ North, Longitude 22° 34′ East) which is situated on the road from the village of Kortanjo to the village of Momona, at an approximate distance of 6 kilometres from Kortanjo.

(*n.*) Thence it runs in a straight line in a north-north-easterly

ligne droite elle coupe par son milieu la route de Moundangya (Mundangya) à Loudjouga (Lujugo).

(*h.*) Ensuite, allant en direction nord-ouest et en ligne droite, elle coupe par son milieu la route de Moundangya (Mundangya) à Timassi.

(*i.*) De là, en ligne droite et en direction nord-ouest, elle passe au point où l'Oued Moundangya (Mundangya) coupe la route de Koumorro (Komoru) à Timassi.

(*j.*) Après, elle se dirige vers l'ouest-nord-ouest et passe en ligne droite à un arbre (murrais) situé sur l'Oued Kadjoul (Kajul) approximativement à 1 kilomètre au sud du village de Siarrei.

(*k.*) Elle va ensuite en ligne droite dans la direction du nord-ouest au sommet du Hadjer Dakandeï distant de 7 kilomètres environ de cet arbre. Prenant la direction nord-nord-ouest, elle passe ensuite en ligne droite au sommet du Hadjer Mirsi.

(*l.*) Du Hadjer Mirsi, orientée vers le nord, et allant en ligne droite, elle passe à une clairière située sur la piste qui va du village de Babel ou Mouda ouest (Muda West) au village de Fogfogui (Fofogiat) et approximativement à 3 kilomètres du village de Babel.

(*m.*) De ce point elle va en droite ligne et en direction nord-nord-est, et elle passe à l'arbre frontière, Latitude 11° 47′ nord et Longitude 22° 34′ est, qui est situé sur la route de Kortanjo à Momona et à une distance approximative de 6 kilomètres de Kortanjo.

(*n.*) Elle passe ensuite en droite ligne et en direction nord-direction to the summit of Hagar Hagara.

(*o.*) Thence the frontier runs in a straight line in a north-north-easterly direction to the "hameida" tree called Koatuya (Koatouya), Latitude 12° 03′ North and Longitude 22° 38′ East, which is on the road from the village of Mogororo (Mougororo) to Darfur (Darfour).

(*p.*) Thence it runs in a straight line in a north-easterly direction to the point where a line drawn from the summit of Hagar Zira to this "hameida" tree would cut the Wadi Saleh.

(*q.*) The frontier then runs along the bed of the Wadi Saleh in a westerly direction until it reaches the Wadi Azum (Azoum).

(*r.*) It then follows the bed of the Wadi Azum (Azoum) to its junction with the Wadi Kaja (Kadja). This junction is situated to the east of and near to the triangulation beacon, whose coordinates are Latitude 12° 02′ 17″ North and Longitude 22° 28′ 18″ East.

Section IV.

(*a.*) From this junction the frontier follows the median line of the Wadi Kaja to its junction with the Wadi Bir Kunjan (Bir Koundjane) or Atamarga.

(*b.*) It then follows the bed of that wadi in a north-easterly direction to a point exactly 2½ kilometres due south of the southern summit of the most eastern Jebel Gunguri (Goundjouri) which is shown on the map height 817.

(*c.*) Thence it runs in a straight line due northwards to this point marked 817.

(*d.*) Thence it follows the crest of the eastern Jebel Gunguri (Goundjouri) to the northern summit, which is shown on the map height 839.

nord-est au sommet du Hadjer Hagara.

(*o.*) De là, en ligne droite, toujours en direction nord-nord-est, elle passe à l'arbre (hameida) appelé Koatouya (Koatuya), Latitude 12° 03′ nord et Longitude 22° 38′ est, sur la route de Mongororo (Mogororo) au Darfour.

(*p.*) Ensuite, elle passe en ligne droite et en direction nord-est au point où la ligne partant du sommet du Hadjer Zira et aboutissant à cet arbre coupe l'Oued Saleh.

(*q.*) La frontière suit le lit de l'Oued Saleh en direction ouest jusqu'à son confluent avec l'Oued Azoum (Azum).

(*r.*) Elle se confond avec le lit de cet oued jusqu'à son confluent avec l'Oued Kadja (Kaja), confluent situé à l'est et dans le voisinage du signal géodésique dont les coordonnées sont Latitude 12° 02′ 17″ nord et Longitude 22° 28′ 18″ est.

Section IV.

(*a.*) De ce confluent, la frontière suit la ligne médiane du lit de l'Oued Kadja (Kaja) jusqu'au confluent de celui-ci avec l'Oued Bir Koundjane (Bir Kunjan) ou Atamarga.

(*b.*) Elle suit le lit de cet oued en direction du nord-est jusqu'à un point situé exactement à 2 kilomètres 500 au sud du sommet sud de la partie la plus orientale du Djebel Goundjouri (Gunjuri), coté sur la carte 817.

(*c.*) De là, elle passe en ligne droite à ce sommet.

(*d.*) Elle suit ensuite la crête du massif oriental du Djebel Goundjouri (Gunjuri) jusqu'au sommet nord coté 839.

(*e.*) Thence it runs in a north-easterly direction in a straight line to the summit of Jebel Njunun (Djounoun).

(*f.*) Thence it runs in a west-north-westerly direction in a straight line to the summit of Jebel Albas.

(*g.*) Thence, still in a west-north-westerly direction, it runs in a straight line to the eastern peak of Jebel Tarei, which is shown as height 853 on the map.

(*h.*) Thence it runs in a north-westerly direction in a straight line to a point exactly 5 kilometres due north of the triangulation beacon on Jebel Arara or Anyatei.

(*i.*) From this point it runs straight to that beacon.

(*j.*) Thence it runs in a straight line in a south-westerly direction to a point situated half-way between the Masalit village of Bardei and the Dagu village of Am Dagl (Am Daguel).

(*k.*) From this point it runs in a west-south-westerly direction in a straight line to a point exactly 2½ kilometres north of the triangulation beacon on Jebel Hungar (Hangara).

(*l.*) The frontier continues along this same straight line until it cuts the Wadi Kaja at about 2 kilometres north of the village of Andara, which is on French territory.

(*m.*) From this intersection it follows the median line of the bed of the Wadi Kaja (Kadja) up to its junction with the Wadi Asunga (Azounga).

(*n.*) Thence it follows the median line of the Wadi Asunga (Azounga) to the point at which the track running north and south through the village of Kudri (Koudri) cuts that wadi. This point of intersection is situated 3½ kilometres north-

(*e.*) De là, elle va en ligne droite et en direction nord-est au sommet du Djebel Djounoun (Njunun).

(*f.*) De ce sommet, elle va en ligne droite et en direction ouest-nord-ouest jusqu'au sommet du Djebel Albas.

(*g*) De là, toujours en ligne droite et en direction ouest-nord-ouest, elle passe au sommet oriental du Djebel Tarei, coté 853 sur la carte.

(*h.*) Ensuite, en ligne directe et en direction nord-ouest, elle va à un point situé exactement à 5 kilomètres au nord du signal géodésique du Djebel Arara ou Anyatei.

(*i.*) Elle passe ensuite en ligne droite à ce signal.

(*j.*) De là, elle se dirige en ligne droite dans la direction du sud-ouest jusqu'à un point situé à mi-chemin entre le village Massalit de Bardei et le village Dadjo d'Am Daguel (Am Dagl).

(*k.*) De ce point, elle prend une direction ouest-sud-ouest, en ligne droite, jusqu'à un point situé exactement à 2 kilomètres 500 au nord du signal géodésique du Djebel Hangara (Hungar).

(*l.*) La frontière suit la même ligne droit pour aboutir sur l'Oued Kadja (Kaja) à 2 kilomètres environ au nord du village d'Andara, qui est en territoire français.

(*m.*) De ce point d'intersection, elle suit la ligne médiane du lit de l'Oued Kadja (Kaja) jusqu'au confluent de celui-ci avec l'Oued Azounga (Asunga).

(*n.*) Elle suit ensuite la ligne médiane de l'Oued Azounga (Asunga) jusqu'au point où le sentier orienté nord-sud qui passe au village de Koudri (Kudri) coupe l'oued. Ce point d'intersection est situé à 3 kilomètres 500 au nord-nord-ouest north-west of the English triangulation beacon on Jebel Kudri (Koudri).

(*c*.) It is understood that all existing watering, fishing or other rights of either side in the beds of the wadis Asunga (Azounga) and Kaja (Kadja) wherever the boundary follows their beds are preserved.

SECTION V.

(*a*.) From the point last mentioned the frontier runs in a north-easterly direction in a straight line to the beacon on Jebel Firni.

(*b*.) Thence it runs in a straight line to the summit of Jebel Selika.

(*c*.) It then follows the watershed between the Wadi Kuruma (Kourouma) and the Wadi Eiteta on the top of the plateau, and, making an abrupt turn to the east, reaches the conspicuous tree, which is shown on the map height 1176.

(*d*.) From this tree the frontier runs in a straight line in a north-easterly direction to the point shown on the map height 1122, and from there, still in a straight line, it runs in an easterly direction to the beacon on Jebel Agilei (Arguilé).

(*e*.) From this beacon it goes in a straight line in a north-easterly direction to the conspicuous tree shown on the map height 1125.

(*f*.) From this tree it turns towards the east and passes over the col situated between Jebel Kurkuba (Kourkouba) and Jebel Rufeida (Roufaida); it follows for an approximate distance of 2 kilometres the small wadi which has its source in this col and which flows towards the east.

(*g*.) After leaving this wadi the frontier continues to run in

du signal géodésique anglais de Koudri (Kudri).

(*c*.) Il est entendu que tous les droits existants d'abreuvoir, de pêche ou autres dans le lit des oueds Azounga (Asunga) et Kadja (Kaja) partout où la frontière suit leur lit seront conservés de chaque côté.

SECTION V.

(*a*.) De ce dernier point, elle part dans la direction du nord-est en ligne droite et passe au signal du Djebel Firni.

(*b*.) De là, elle passe en ligne droite au sommet du Djebel Selika.

(*c*.) Elle suit la ligne de partage des eaux entre l'Oued Kourouma (Kuruma) et l'Oued Eiteta qui passe sur le plateau en faisant un coude brusque à l'est pour atteindre l'arbre remarquable coté 1176 sur la carte.

(*d*.) De cet arbre, elle va en ligne droite, dans la direction du nord-est, au point coté 1122 et de là, encore en ligne droite, dans la direction de l'est, elle passe au signal du Djebel Arguilé (Agilei).

(*e*.) De ce signal, elle va en ligne droite et en direction nord-est à l'arbre remarquable coté 1125 sur la carte.

(*f*.) De cet arbre, elle se dirige vers l'est en passant au col situé entre le Djebel Kourkouba (Kurkuba) et le Djebel Roufaida (Rufeida); elle suit le petit oued qui a sa source dans ce col et coule vers l'est sur une distance approximative de 2 kilomètres.

(*g*.) Ensuite, toujours orientée vers l'est, elle passe à un point an easterly direction to a point half-way between the Masalit village of Hegliga and the Tama village of Niegerri (Niegerrei), which are about 1 kilometre apart.

(*h*.) From this point it runs in a north-easterly direction in a straight line to the summit of Jebel Abu Ligam (Abouligam).

(*i*.) Thence it runs in an easterly direction in a straight line to a point 3 kilometres west of Jebel Kishkish, and from that point in a north-easterly direction in a straight line to a rock shown height 1091 on the map.

(*j*.) From this rock the frontier runs in a straight line in a north-westerly direction to a point 1 kilometre to the east of the triangulation beacon situated on the plateau at the south end of Jebel Om.

(*k*.) From there it runs up on to the plateau and follows the centre line thereof from South to North until it reaches the main summit. It then follows the centre line of the northern part of the plateau up to a point situated about 1 kilometre east of the wells of Goz Bedin (Bedine).

(*l*.) From this point the frontier takes a westerly direction and runs in a straight line to a point 200 metres north of these wells. Continuing thence in a straight line, it reaches Rahad Mugaddad (Mougaddad), which is situated at the junction of the Wadi Atrun (Atroun) with the Wadi Sineit.

(*m*.) Thence it runs in a straight line to a point on the Wadi Bueisa (Bouessa) or Gumara (Goumara) situated one and a half kilometres to the east of the wells of Bueisa (Bouessa).

(*n*.) From this point the frontier follows the bed of the wadi itself in a westerly direction until

situé à mi-distance du village Massalit de Hegliga et du village Tama de Niegerrei (Niegerri), éloignés l'un de l'autre de 1 kilomètre environ.

(*h*.) De là, en ligne droite et en direction nord-est, elle passe au sommet du Djebel Abouligam (Abu Ligam).

(*i*.) De là, en direction est, elle passe en ligne droite à 3 kilomètres à l'ouest du Djebel Kishkish, puis en direction nord-est en ligne droite à un rocher coté 1091 sur la carte.

(*j*.) De là, en direction nord-ouest et en ligne droite elle passe à 1 kilomètre à l'est du signal géodésique qui se trouve sur le plateau à l'extrémité sud du Djebel Om.

(*k*.) De là, elle monte sur le plateau dont elle suit la ligne médiane du sud au nord, puis elle passe sur le principal sommet; elle suit la ligne médiane de la partie nord du plateau jusqu'à un point situé à environ 1 kilomètre à l'est des puits de Goz Bedine (Goz Bedin).

(*l*.) La frontière passe ensuite en ligne droite à 200 mètres au nord de ces puits en prenant la direction de l'ouest, puis toujours en ligne droite elle atteint la Rahad Mougaddad (Mugaddad), située au confluent de l'Oued Atroun (Atrun) et de l'Oued Sineit.

(*m*.) De la, elle passe en ligne droite à un point sur l'Oued Bouessa (Bueisa) ou Goumara (Gumara) situe à 1 kilomètre et demi à l'est des puits de Bouessa (Bueisa).

(*n*.) De ce point, elle suit le lit de l'oued en direction ouest jusqu'aux puits de Bouessa it reaches the Bueisa (Bouessa) wells, which are common to the tribes living on either bank.

SECTION VI.

(*a*.) From Bueisa (Bouessa) wells, the frontier runs in a straight line in a north-westerly direction to the triangulation beacon on Hagar Dirru (Dirro), Latitude 14° 17' 33" North and Longitude 22° 25' 30" East.

(*b*.) Thence it runs in a straight line to the triangulation beacon on the south-western end of Jebel Murra (Mourra), Latitude 14° 18' 38" North and Longitude 22° 25' 36" East.

(*c*.) Thence it follows the crest of Jebel Murra (Mourra) to another beacon marked height 1129 on the map.

(*d*.) From this beacon it runs in a straight line in a northerly direction to a point one kilometre west of the village of Nganga.

(*e*.) Continuing in a straight line thence it runs in a north-north-westerly direction to Goz Memeriko, which it reaches at a point three and a half kilometres north-east of the triangulation beacon of Kulbus (Koulbous).

(*f*.) Thence the frontier takes a northerly direction and runs in a straight line to Goz Gemal Harro (Djemal Harro) which it crosses at a point two kilometres to the west of the summit of Hagar Turat (Tourat).

(*g*.) From that point it runs approximately northwards in a straight line to Rahad Ardeib (Ardeb) or Keita. Thence it runs in a straight line to Hagar Kibish (Kibich) and from there, also in a straight line, to Rahad Nabakai.

(*h*.) From this rahad it run in a straight line to Rahad Gibir (Guiber).

(*i*.) Thence it follows the bed of the Wadi Baringala (Bérin-

(Bueisa), qui sont communs aux tribus riveraines.

SECTION VI.

(*a*.) Des puits de Bouessa (Bueisa) elle va en ligne droite et en direction nord-ouest au signal géodésique du Hadjer Dirro (Dirru), Latitude 14° 17' 33" nord et Longitude 22° 25' 30" est.

(*b*.) De là, elle passe en ligne droite au signal géodésique placé à l'extrémité sud-ouest du Djebel Mourra (Murra), Latitude 14° 18' 38" nord et Longitude 22° 25' 36" est.

(*c*.) Elle suit la crête du Djebel Mourra (Murra) jusqu'à un autre signal coté 1129 sur la carte.

(*d*.) De ce point, se dirigeant en ligne droite vers le nord, elle passe à un point situé à 1 kilomètre à l'ouest du village de Nganga.

(*e*.) De là, toujours en ligne droite, elle atteint en direction nord-nord-ouest le Goz Mémériko en un point situé à 3 kilomètres et demi au nord-est du signal géodésique de Koulbous (Kulbus).

(*f*.) De là, elle se dirige en ligne droite vers le nord et passe au Goz Djemal Harro (Gemal Harro), qu'elle atteint en un point situé à 2 kilomètres à l'ouest du sommet du Hadjer Tourat (Turat).

(*g*.) De là, elle va en direction approximativement nord et en ligne droite à la Rahad Ardeb (Ardeib) ou Keita; de là, en ligne droite, au Hadjer Kibich (Kibish) et de là, en ligne droite encore, à la Rahad Nabakai.

(*h*.) De ce point, elle va en ligne droite à la Rahad Guiber (Gibir).

(*i*.) De ce point elle suit le lit de l'Oued Béringala (Baringala)

gala for a distance of two kilometres in a westerly direction.

(*j.*) The frontier then leaves the wadi and runs in a north-north-easterly direction in a straight line to Rahad Digui.

(*k.*) Thence it runs in a straight line in an easterly direction to Rahad Shurak (Chourak).

(*l.*) It then runs in a straight line in a north-easterly direction to the spur marked as height 979 on the map.

(*m.*) Thence it runs in an east-north-easterly direction in a straight line to a point midway between Jebel Sendi and Jebel Wustani (Oustani).

(*n.*) From this point it goes approximately eastwards in a straight line to the tree which was used as a beacon for triangulation and which is shown height 984 on the map.

(*o.*) Thence the frontier runs in a roughly east-north-easterly direction in a straight line to Hagar Jukujuku (Dioukou-Dioukou), leaving the wells of Duwei (Douai) to the north and those of Fogi (Fogué) and Girgira (Guirguéra) to the south.

(*p.*) From Hagar Jukujuku (Dioukou-Dioukou) it takes an approximately northern direction and runs in a straight line to the wells of Gebelud (Diabelout) which are common to the tribes living on either bank.

(*q.*) Thence the frontier runs in a straight line in a north-north-westerly direction to a point on the Wadi Oruba (Orouba) one kilometre away from the junction of that wadi with Lake Undur (Oumdour).

(*r.*) Thence it follows the bed of the wadi until it reaches Lake Undur (Oumdour). The waters of the lake are common to the tribes living on either bank.

sur une distance de 2 kilomètres et dans la direction de l'ouest.

(*j.*) Elle quitte ensuite l'oued et prend une direction nord-nord-est pour aller en ligne droite à la Rahad Digui.

(*k.*) De la Rahad Digui elle va en ligne droite vers l'est à la Rahad Chourak (Shurak).

(*l.*) De là elle passe en direction nord-est en ligne droite à l'éperon coté 979 sur la carte.

(*m.*) De ce point elle prend une direction est-nord-est et passe en ligne droite à mi-distance entre le Djebel Sendi et le Djebel Oustani (Wustani).

(*n.*) Elle atteint ensuite, en direction approximativement est, en ligne droite, l'arbre coté 984, qui a servi de signal géodésique.

(*o.*) De là, elle prend une direction approximativement est-nord-est laissant les puits de Douai (Duwei) au nord et les puits de Fogué (Fogi) et de Guirguéra (Girgira) au sud et en ligne droite elle passe au Hadjer Dioukou Dioukou (Jukujuku).

(*p.*) De ce hadjer, elle prend une direction approximativement nord et passe en ligne droite aux puits de Diabelout (Gebelud) qui sont communs aux tribus riveraines.

(*q.*) De ce point, elle va en ligne droite, en direction nord-nord-ouest, à un point situés ur l'Oued Orouba (Uruba), distant de 1 kilomètre du point où cet oued se jette dans la mare d'Oumdour (Undur).

(*r.*) Elle suit le lit de cet oued et atteint la mare d'Oumdour (Undur) dont les eaux sont communes aux tribus riveraines.

SECTION VII.

(*a*.) From Lake Undur the frontier follows the Wadi Tini (Tiné) until its junction with the Wadi Greigi (Greigui) or Bahai.

(*b*.) Thence it follows the bed of the latter wadi in a north-easterly direction until the junction of the most easterly branch of this wadi with the Wadi Howa at a point situated about 2,750 metres south-west of one of the geodetic beacons on Jebel Anagara (Hangara) of which the co-ordinates are Latitude 15° 44' 04" North and Longitude 23° 07' 55" East.

(*c*.) The wells at Tini (Tiné) and Bahai are common to the tribes living on either bank.

SECTION VIII.

(*a*.) From the junction of the most easterly branch of the Wadi Greigi (Greigui) or Bahai with the Wadi Howa the frontier follows the centre line of the valley of the Wadi Howa as far as its intersection by the 24th meridian of eastern longitude.

(*b*.) To mark the intersection of the Wadi Howa with the 24th meridian, which takes place about Latitude 15° 43' North, a line of trees has been cleared across the valley.

(*c*.) The meridian passes through Rahad Wahal and this rahad is common to the tribes living on either bank.

(*d*.) On the south bank, about 20 metres above the sandy slope of the valley, a "heglig" tree has had the letters 24 M branded upon it and the lower part of the trunk has been ring-barked. About 400 metres north of this tree a second "heglig" tree has been similarly ring-barked and the figures 24 cut upon it.

SECTION VII.

(*a*.) De la mare d'Oundour, la frontière suit l'Oued Tiné (Tini) jusqu'à son confluent avec l'Oued Greigui (Greigi) ou Bahai.

(*b*.) Puis elle suit le lit de cet oued en direction nord-est jusqu'au confluent du bras le plus à l'est de cet oued avec l'Oued Howa en un point situé à environ 2,750 mètres au sud-ouest d'un des signaux géodésiques du Djebel Hangara (Anagarra) dont les coordonnées sont Latitude 15° 44' 04" nord et Longitude 23° 07' 55" est.

(*c*.) Les puits de Tiné (Tini) et de Bahai sont communs aux deux tribus riveraines.

SECTION VIII.

(*a*.) La frontière, du confluent du bras situé le plus à l'est de l'Oued Bahai ou Greigui (Greigi) avec l'Oued Howa, suit la ligne médiane de la vallée de cet oued jusqu'à son intersection avec le méridien 24° est.

(*b*.) Pour marquer l'intersection de l'Oued Howa avec le méridien 24°, qui se trouve approximativement à hauteur du parallèle 15° 43' nord, une ligne d'arbres a été coupée en travers de la vallée.

(*c*.) Ce méridien coupe la Rahad Wahal, mare commune aux tribus riveraines.

(*d*.) Sur la rive sud, à environ 20 mètres au-dessus de la pente sablonneuse de la vallée, les lettres 24 M ont été marquées au feu sur un hedjilidj dont le tronc a été écorcé en anneau à la partie inférieure. Dans le lit de la vallée, à une distance d'environ 400 mètres au nord de cet arbre, un deuxième hedjilidj a été écorcé de même et on y a entaillé le chiffre 24.

(*e.*) The valley of the Wadi Howa, which reaches a width of several kilometres, is clearly defined by trees and vegetation, and by an abrupt change from sandy soil on its banks to clay soil in the bed.

(*f.*) The valley will remain common to the tribes living on either bank and each tribe will retain such rights to dig wells, cultivate, and graze within the limits of the valley as they have hitherto enjoyed.

(*g.*) From the intersection of the wadi and the 24th meridian the frontier follows that meridian northwards up to the point where it meets the parallel of Latitude 19° 30′ North.

(*h.*) The 24th meridian, which passes through desert country, has only been fixed on the ground at certain points.

(*i.*) North of the Wadi Howa it passes between the two beacons on Hagar Kimairi (Kinairi).

(*j.*) Further north it runs to the east of a large heap of stones which mark an astronomically fixed point at the foot of the Erdi Ma cliffs. The co-ordinates of this point are Latitude 18° 38′ 59″ North and Longitude 23° 59′ 49″ East.

(*k.*) At the intersection of parallel 19° 30′ North and meridian 24° East there is a small heap of stones to mark the end of the boundary.

(*l.*) The rights of control beyond the 24th meridian recognised by the Convention of the 8th September, 1919, as belonging to the French Government include the right to take water from the wells of Sendia (Sendi) and from other watering places situated between that meridian and Longitude 24° 30′ East.

(*e.*) La vallée de l'Oued Howa, qui atteint une largeur de plusieurs kilomètres, est nettement définie par des arbres et de la végétation et par le changement brusque du sol sablonneux sur les berges en sol argileux dans le lit.

(*f.*) La vallée sera commune aux tribus riveraines chacune d'elles conservant tels droits dont elle a joui jusqu'à présent, creuser des puits, cultiver, faire pâturer dans les limites de la vallée.

(*g.*) A partir de l'intersection de l'oued avec le méridien 24°, la frontière suit le méridien 24° en direction du nord, jusqu'à sa rencontre avec le parallèle 19° 30′ nord.

(*h.*) Le méridien 24°, qui passe en région désertique n'a pu être répéré sur le terrain qu'en certains points seulement.

(*i.*) Au nord de l'Oued Howa, il passe entre les deux signaux du Hadjer Kinairi (Kimairi).

(*j.*) Plus au nord, il passe à l'est d'un gros tas de pierres qui indique au pied des falaises de l'Erdi Ma l'emplacement d'un point astronomique dont les coordonnées sont: Latitude 18° 38′ 59″ nord et Longitude 23° 59′ 49″ est.

(*k.*) A l'intersection du parallèle 19° 30′ et du méridien 24°, un petit tas de pierres marque l'extrémité de la frontière.

(*l.*) Le droit de surveillance au delà du méridien 24° reconnu au Gouvernement français par la Convention du 8 septembre 1919 comporte le droit de faire de l'eau aux puits de Sendi (Sendia) et autres aiguades situées entre ce méridien et le méridien 24° 30′ est.

General Clauses.

(*a.*) Where the frontier follows a wadi, cuts a lake or rahad or changes its direction at either of such, the watering rights existing therein will be preserved by the inhabitants on either side.

(*b.*) After the delimitation of the frontier is finished, a period of six months will be granted to the natives on either side of the frontier for them to choose the territory on which they wish permanently to reside.

(*c.*) This period will count from the day on which notification shall have been given to those interested.

(*d.*) This day will be fixed beforehand by agreement between the two Governments. At the expiration of the period mentioned, the local administrators will take the necessary measures to stop tribes or individuals who may cross the frontier without authority from establishing themselves on their respective territories.

(*e.*) Two maps signed by each of the Commissioners accompanies this protocol.

(*f.*) In cases where the details of the map do not appear to correspond exactly with the wording of the protocol, it is the wording of the protocol which must be strictly followed.

(*g.*) When mention of a village is made in the text, it is understood that it refers to the position of such a village as found by the Commissioners on the ground, *i.e.*, to the position as shown on the map.

(*h.*) From parallel 19° 30' north to parallel 11° north, the work of delimitation and of discussion on the ground was duly carried out by Lieutenant-Colonel H. D. Pearson, D.S.O., R.E., on the English side. The site of

Dispositions générales.

(*a.*) Là où la frontière suit un oued, coupe une mare ou y change de direction, les droits à l'eau tels qu'ils y existent pour les habitants de chaque côté seront conservés.

(*b.*) Après l'achèvement de la délimitation, un délai de six mois sera accordé aux indigènes de chaque côté de la frontière pour choisir le territoire sur lequel ils veulent fixer leur résidence.

(*c.*) Ce délai comptera du jour où la notification en aura été faite aux intéressés.

(*d.*) Ce jour sera préalablement décidé d'accord entre les deux Gouvernements. Ce délai expiré, les administrations locales prendront les mesures nécessaires pour empêcher l'établissement sur leurs territoires respectifs des tribus ou des individus qui auraient franchi la frontière sans autorisation.

(*e.*) Deux cartes signées par chacun des Commissaires accompagnent le présent protocole.

(*f.*) Dans le cas où les détails de la carte ne paraîtraient pas correspondre exactement au texte du protocole, il y aura lieu de s'en tenir strictement au texte.

(*g.*) Lorsque dans le texte il est fait mention d'un village, il est entendu qu'il s'agit de l'emplacement tel que les Commissaires l'ont trouvé sur le terrain, c'est-à-dire tel qu'il figure sur la carte.

(*h.*) Du parallèle 19° 30' au parallèle 11° de latitude nord les travaux de délimitation et les discussions sur le terrain ont été conduites avec compétence par le Lieutenant-Colonel Pearson, D.S.O., R.E., du côté anglais.

Colonel Pearson's grave at Um Dafog (Am Dafog) will be recognised as British territory, and the right of access to it will be reserved in perpetuity for such persons as are duly authorised by the Sudan Government.

Done in duplicate at London, the

L'emplacement de la tombe du Colonel Pearson à Am Dafog (Um Dafog) sera reconnu comme territoire britannique et le droit d'accès y sera réservé à perpétuité aux personnes dûment autorisées par le Gouvernement du Soudan.

Fait en double exemplaire à Londres, le

Annex 22

ANGLO-FRENCH DECLARATION OF 21 JANUARY 1924 AGREEING TO PROTOCOL OF 10 JANUARY 1924

France and United Kingdom. Exchange of Notes
agreeing to the ratification of the Protocol defining the boundary
between the French Equatorial Africa and the Anglo-Egyptian Sudan,
together with the Protocol, London, 21 January 1924,
in League of Nations: *Treaty Series*, No. 723, Vol. XXII,
1924, pp. 462-480.

No. 723.

FRANCE ET ROYAUME-UNI.

Échange de Notes portant Ratification du Protocole déterminant la Frontière entre l'Afrique équatoriale française et le Soudan anglo-égyptien et Protocole y relatif, Londres, le 21 Janvier 1924.

FRANCE AND UNITED KINGDOM.

Exchange of Notes agreeing to the Ratification of the Protocol defining the Boundary between the French Equatorial Africa and the Anglo-Egyptian Sudan, together with the Protocol, London, January 21, 1924.

No. 723.—Exchange of Notes between France and the United Kingdom agreeing to the Ratification of the Protocol defining the Boundary between the French Equatorial Africa and the Anglo-Egyptian Sudan, together with the Protocol, London, January 21, 1924.

Textes officiels français et anglais communiqués par le Ministère des Affaires étrangères de Sa Majesté britannique. L'enregistrement de cet échange de notes a eu lieu le 12 septembre **1924.**

(1.)

Le Marquis Curzon of Kedleston à l'Ambassadeur de France.[1]

The Marquess Curzon of Kedleston to the French Ambassador.

Your Excellency, *Foreign Office, January* 21, 1924.

I HAVE the honour to state that the members of the Boundary Commission designated, in execution of the terms of paragraph 4 of the Declaration[2] signed in London on the 21st March, 1899, completing the Convention between Great Britain and France signed in Paris on the 14th June, 1898, to delimit on the spot the frontier between French Equatorial Africa and the Anglo-Egyptian Soudan, in accordance with the indications given in paragraph 2 of that Declaration as amplified by the Supplementary Convention signed in Paris on the 8th September, 1919, have concluded their labours and drawn up the annexed protocol signed here on the 10th instant, defining the said boundary. In illustration of the frontier line proposed by the Commission in this protocol two maps on a scale of 1:1,000,000 with two insets on a scale of 1 : 250,000 are attached.

In forwarding to your Excellency a copy of the said protocol and maps, I have the honour to inform you that His Majesty's Government confirm the proposals of the Commission and consider the present note as being equivalent to ratification.

The necessary instructions will be sent to His Majesty's High Commissioner for Egypt and the Soudan in order that the present agreement may take effect as from the date of the present note, it being understood that the day mentioned in clause (C) of the general clauses at the end of the protocol as the date upon which the period of six months specified in the preceding clause begins to run shall be subsequently settled between the local Governments concerned. The notification which, in accordance with the terms of the protocol, is to mark the beginning of the above-mentioned period, shall in principle be made before the end of the current year. If for any reason the notification shall not have been made before the

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[1] La teneur de ces deux notes étant identique, il ne paraît pas nécessaire de les traduire en anglais et en français.

[2] British and Foreign State Papers, Vol. 91, page 55.

No. 723.—Échange de Notes entre la France et le Royaume-Uni portant Ratification du Protocole déterminant la Frontière entre l'Afrique équatoriale française et le Soudan anglo-égyptien, et Protocole y relatif, Londres, le 21 Janvier 1924.

French and English official texts, communicated by His Britannic Majesty's Foreign Office. The registration of this Exchange of Notes took place September 12, 1924.

(2.)

L'Ambassadeur de France au Marquis Curzon of Kedleston.(1)

The French Ambassador to the Marquess Curzon of Kedleston.

Ambassade de France, Londres,
le 21 *janvier* 1924.

M. le Marquis,

Les membres de la Commission de Délimitation désignés, conformément au paragraphe 4 de la Déclaration(2) signée à Londres, le 21 mars 1899, complétant la Convention signée à Paris, entre la France et la Grande-Bretagne, le 14 juin 1898, pour déterminer sur le terrain la frontière entre l'Afrique équatoriale française et le Soudan anglo-égyptien, conformément aux indications figurant au paragraphe 2 de la Déclaration de Londres, telles qu'elles se trouvent développées par la Convention additionnelle signée à Paris, le 8 septembre 1919, ont terminé leurs travaux. Ils ont rédigé le protocole ci-annexé, signé à Londres le 10 de ce mois, qui définit ladite frontière et ont joint à ce protocole, en vue de reproduire exactement la frontière proposée, deux cartes à l'échelle d'un millionnième et deux planches à l'échelle du 250 millième.

En remettant à votre Seigneurie un exemplaire dudit protocole et des cartes, j'ai l'honneur de lui faire savoir que le Gouvernement de la République approuve les propositions de la Commission et considère la présente lettre comme équivalant à une ratification.

Les instructions nécessaires seront envoyées à M. le Gouverneur général de l'Afrique équatoriale française pour que le présent accord puisse prendre effet à partir de la date de la présente lettre. Il est entendu que le jour mentionné dans la clause (C) des clauses générales, qui se trouvent à la fin du protocole et qui doit constituer la date à partir de laquelle courra la période mentionnée dans la clause précitée, sera ultérieurement fixé par les autorités locales intéressées. La notification qui, aux termes du protocole, constitue le point de départ du délai précité, devra, en principe, être faite avant la fin de l'année courante. Au cas où, pour un motif quelconque, elle ne serait pas intervenue avant le 1^{er} janvier 1925, le délai de six

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(1) The contents of the two notes being identical, it does not appear to be necessary to translate them into English and French.

(2) De Martens, Nouveau Recueil Général de Traités, deuxième série, tome XXIX, page 387.

1st January, 1925, the aforesaid period of six months shall begin to run on this date; the notification to the natives shall be made publicly and officially, and, in so far as may be possible, in the joint presence of representatives of the two local administrations.

A copy of the above-mentioned protocol and maps, together with a copy of the present exchange of notes, will be communicated as soon as possible, and in agreement between the respective Governments, to the League of Nations.

I have, &c.
CURZON OF KEDLESTON.

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mois dont il a été question plus haut, commencerait à courir à cette date. La notification aux indigènes sera faite de façon officielle et publique; dans la mesure du possible, elle aura lieu, les représentants des deux administrations locales étant simultanément présents.

Un exemplaire du protocole ci-joint et des cartes y annexées, ainsi qu'un exemplaire des présentes lettres, seront communiqués aussitôt que possible à la Société des Nations par les deux Gouvernements intéressés agissant d'un commun accord.

Veuillez agréer, &c.
SAINT-AULAIRE.

PROTOCOL.

THE undersigned, duly appointed by their respective Governments as Commissioners in execution of paragraph 4 of the Declaration signed in London on the 21st March, 1899, completing the Convention between Great Britain and France signed in Paris on the 14th June, 1898, to delimit on the spot the frontier line between French Equatorial Africa and the Anglo-Egyptian Sudan, in accordance with the indications given in paragraph 2 of that Declaration as amplified by the Supplementary Convention signed at Paris on the 8th September, 1919, after examining and recording their agreement as to the geodetic and topographical details, have drawn up the protocol which follows.

SECTION I.

(*a.*) The frontier of the Anglo-Egyptian Sudan and French Equatorial Africa starts from a beacon made of a heap of stones about 5 metres high, called "The meeting point of the three frontiers." The co-ordinates of this beacon are Latitude 05° 01′ 10″ North and Longitude 27° 26′ 37″ East of Greenwich. From this point the frontier follows the water-parting between the basin of the Nile and that of the Congo, as described below.

(*b.*) The frontier passes 200 metres to the west of the astronomically fixed beacon of Yubo (Youbo), Latitude 05° 23′ 26″ North and Longitude 27° 14′ 52″ East.

(*c.*) Thence it continues towards the north, passing about 200 metres to the west of the

PROTOCOLE.

LES soussignés dûment désignés comme Commissaires par leurs Gouvernements respectifs en exécution du paragraphe 4 de la Déclaration signée à Londres le 21 mars 1899, Déclaration complétant la Convention entre la Grande-Bretagne et la France signée à Paris le 14 juin 1898, chargés de délimiter sur le terrain la ligne frontière entre l'Afrique Équatoriale Française et le Soudan Anglo-Égyptien en se conformant aux indications données au paragraphe 2 de cette Déclaration modifiée par la Convention supplémentaire signée à Paris le 8 septembre 1919, après avoir examiné les travaux géodésiques et topographiques et constaté leur concordance, ont rédigé le présent protocole.

SECTION I.

(*a.*) La frontière du Soudan Anglo-Égyptien et de l'Afrique Équatoriale Française part d'un signal, constitué par un tas de pierres haut de 5 mètres environ, appelé "point de jonction des trois frontières." Ses coordonnées sont : Latitude 05° 01′ 10″ nord et Longitude 27° 26′ 37″ est de Greenwich. A partir de ce point, elle suit la ligne de partage des eaux entre le bassin du Nil et celui du Congo ci-dessous déterminée.

(*b.*) Elle passe à 200 mètres à l'ouest du signal astronomique de Youbo (Yubo), Latitude 05° 23′ 26″ nord, Longitude 27° 14′ 52″ est.

(*c.*) Elle se prolonge vers le nord en passant à 200 mètres environ à l'ouest du grand tas de large heap of stones which marks the astronomically fixed point of Kumu (Koumou), Latitude 05° 50′ 19″ North and Longitude 27° 01′ 28″ East.

(*d.*) From this point it proceeds in the direction of the astronomically fixed beacon of Komo, and passes about 150 metres to the south of the heap of stones which marks that beacon at Latitude 06° 01′ 44″ North and Longitude 26° 34′ 47″ East. Thence, bending to the west, the frontier follows the watershed as far as the sources of the river Pilliamo. It leaves Hagar Daragumba (Daragoumba) to the east and again bends westwards to pass to the east of the point called Gangura (Gangoura) which lies in French territory. Thence, keeping always to the water-parting, the frontier passes between the sources of the Busseri (Bousseri) and the Golinga to Goz Bondi; thence to about 3 kilometres south of the beacon on Goz Dengwiri (Dinguiri) which is formed by a tree and a small heap of stones and whose coordinates are Latitude 06° 43′ 51″ North and Longitude 26° 19′ 36″ East.

(*e.*) The frontier then runs to a point 1 kilometre south-west of the Bira beacon, Latitude 07° 01′ North and Longitude 26° 01′ East, leaving the sources of the Warra (Ouara) to the west.

(*f.*) From this point it runs about 2 kilometres south of the Bibi beacon, Latitude 07° 10′ 49″ North and Longitude 25° 46′ 18″ East.

(*g.*) Keeping always to the water-parting, the frontier then runs to about 2 kilometres south of the Robo beacon, Latitude 07° 14′ 02″ North and Longitude 25° 37′ 42″ East.

(*h.*) Thence it runs to a conspicuous rock, a point in the

pierres qui marque le signal astronomique de Koumou (Kumu), Latitude 05° 50′ 19″ nord et Longitude 27° 01′ 28″ est.

(*d.*) Elle remonte dans la direction du signal astronomique de Komo ; elle passe à 150 mètres environ au sud du tas de pierres du signal, Latitude 06° 01′ 44″ nord et Longitude 26° 34′ 47″ est. Elle suit la ligne de crête en s'infléchissant vers l'ouest jusqu'aux sources de la rivière Pilliamo ; elle laisse à l'est le Hadjer Daragoumba (Daragumba) et s'infléchit de nouveau à l'ouest pour passer à l'est du point de Gangoura (Gangura) qui est en territoire français. Ensuite, elle passe, toujours sur la ligne de partage des eaux, entre les sources du Bousseri (Busseri) et du Golinga : de là, au Goz Bondi ; puis à environ 3 kilomètres au sud du signal du Goz Dinguiri (Dengwiri) formé d'un arbre et d'un petit tas de pierres, Latitude 06° 43′ 51″ nord et Longitude 26° 19′ 36″ est.

(*e*) La frontière laisse à l'ouest les sources du Ouara (Warra) et passe à 1 kilomètre au sud-ouest du signal de Bira, Latitude 07° 01′ nord et Longitude 26° 01′ est.

(*f.*) De là, elle passe à 2 kilomètres environ au sud du signal de Bibi, Latitude 07° 10′ 49″ nord et Longitude 25° 46′ 18″ est.

(*g.*) Toujours suivant la ligne de partage des eaux, elle passe à 2 kilomètres environ au sud du signal de Robo, Latitude 07° 14′ 02″ nord et Longitude 25° 37′ 42″ est.

(*h.*) Elle passe ensuite à un rocher remarquable, point de la

French chain of triangulation, whose co-ordinates are Latitude 07° 20′ 54″ North and Longitude 25° 23′ 50″ East. Thence, separating the valley of the Sopo from that of the Vovodo, it reaches another point in the same chain of triangulation situated on a laterite outcrop whose co-ordinates are Latitude 07° 50′ 34″ North and Longitude 25° 14′ 34″ East.

(*i.*) From this point it passes about 2 kilometres east of the Kurumwa (Kourouma) beacon and then about 2 kilometres north of the triangulation beacon on Jebel Amborogo.

(*j.*) It then runs about 1 kilometre north of the Kudungeri (Koudomguéré) beacon. Thence it runs to the Ambuyuju (Ambouyoudiou) beacon, leaving the sources of the Duyu (Douyou) on the French side, and thence to Jebel Gingamba (Djingamba). Thence, separating the valley of the Boro from that of the Wadi Va, it passes through a triangulation beacon in Latitude 08° 26′ 43″ North and Longitude 24° 09′ 51″ East. It then passes through the triangulation beacon of Abu Rasein (Abou Rasseiu).

(*k.*) It then passes round the sources of the Wadi Va and runs about 4 kilometres north of the beacon of Kiuku (Kioukou). It then runs about 3 kilometres south of the triangulation beacon of Jebel Hamid and thence to the triangulation beacon on Jebel Gawarra (Gaoura). Thence, passing round the sources of the Adda, it runs to the beacon of Rumbukindi (Roumboukindi).

(*l.*) Thence it runs to the beacon on Jebel Busu (Bouzou). From this point it passes to the west of the beacon in the English triangulation chain called Jebel

chaine géodésique française dont les coordonnées sont : Latitude 07° 20′ 54″ nord, Longitude 25° 23′ 50″ est. Elle se prolonge en séparant la vallée du Sopo de celle du Vovodo et elle atteint un nouveau point géodésique de la même chaine placé sur une table de latérite, dont les coordonnées sont : Latitude 07° 50′ 34″ nord et Longitude 25° 14′ 34″ est.

(*i.*) De ce point, elle passe à 2 kilomètres environ à l'est du signal de Kourouma (Kurumwa) et à 2 kilomètres environ au nord du signal géodésique de Amborogo.

(*j.*) Elle court ensuite à 1 kilomètre environ au nord du signal de Koudomguéré (Kundungeri). De là, elle atteint le signal de Ambouyoudiou (Ambuyuju) en laissant du côté français les sources de la Douyou (Duyu). Puis elle se dirige sur le Djebel Djingamba (Gingamba). Elle passe ensuite à un signal géodésique, Latitude 08° 26′ 43″ nord et Longitude 24° 09′ 51″ est en séparant la vallée du Boro de celle de l'Ouadi Va. Elle passe au signal géodésique de l'Abou Rassein (Abu Rasein).

(*k.*) Elle contourne ensuite les sources de l'Ouadi Va pour passer à environ 4 kilomètres au nord du signal de Kioukou (Kiuku). Elle passe ensuite à 3 kilomètres environ au sud du signal géodésique du Djebel Hamid. Elle atteint de là le signal géodésique du Djebel Gaoura (Gawarra). Puis, contournant les sources de l'Adda, elle passe au signal de Roumboukindi (Rumbukindi).

(*l.*) Elle passe ensuite au signal du Djebel Bouzou (Busu). De ce point elle passe à l'ouest du signal de la chaîne anglaise appelé Djebel Moho et atteint le

Moho and reaches the French triangulation beacon which has as co-ordinates Latitude 09° 04′ 58″ North and Longitude 23° 27′ 42″ East.

(*m.*) It separates the sources of the Umbelasha (Oum Balatcha) from the sources of the Kotto or Meini, and after passing about 6 kilometres south of Jebel Guma (Gouma), reaches Jebel Tinga, upon which is a triangulation beacon.

SECTION II.

(*a.*) Thence it follows the water-parting between the Wadis Umbelasha (Oum Balatcha) and Khadra (Khadra) on the one side and the River Kara or Yata on the other in a northerly direction to the beacon on Jebel Kumu. Latitude 09° 33′ 33″ North and Longitude 23° 37′ 49″ East.

(*b.*) Thence it runs in a straight line in a north-north-easterly direction to the beacon on Jebel Mishmira (Michemir), Latitude 09° 40′ 17″ North and Longitude 28° 41′ 48″ East.

(*c.*) Thence in runs in a straight line a little west of north to the beacon on Jebel Yarra.

(*d.*) Thence it runs in a north-westerly direction in a straight line to the chief watering place on the east side of the depression of Um Dafog (Am Dofog).

(*e.*) From this point the frontier line runs in a north-westerly direction at a distance of 1 kilometre to the east of, and parallel to, the road which passes from Um Dafog (Am Dofog) to Lake Tisi (Tizi), by Rahad Dihn (Dihin), Rahad Sahabaia (Sahabeia), Rahad Sumua (Soumou), Rahad Kujufu Koudioufo u) and Rahad Boarig (Boarit) to a point 1 kilometre east of the eastern extremity of Lake Tisi (Tizi).

signal géodésique de la chaîne française qui a pour coordonnées Latitude 09° 04′ 58″ nord et Longitude 23° 27′ 42″ est.

(*m.*) Elle sépare les sources de l'Oum Balatcha (Umbelasha) des sources de la Kotto ou Meini, passe à 6 kilomètres environ au sud du Djebel Gouma (Guma) et atteint ensuite le Djebel Tinga, sur lequel se trouve un signal géodésique.

SECTION II.

(*a.*) Elle suit ensuite la ligne de partage des eaux entre les Oueds Oum Balatcha (Umbelasha) et Khadra (Khadra) d'un côté et la rivière Kara ou Yata de l'autre dans la direction du nord jusqu'au Djebel Koumou (Kumu), Latitude 09° 33′ 33″ nord et Longitude 23° 37′ 49″ est.

(*b.*) De là en ligne droite en direction du nord-nord-est elle va au signal géodésique du Djebel Michemir (Mishmira), Latitude 09° 40′ 17″ nord et Longitude 28° 41′ 48″ est.

(*c.*) De là en ligne droite dans une direction légèrement nord-nord-ouest au signal du Djebel Yarra.

(*d.*) Ensuite en direction nord-ouest et en ligne droite au point d'eau principal situé à l'extrémité est de la mare d'Am Dofog (Um Dafog).

(*e.*) De ce point la frontière court en direction nord-ouest à une distance de 1 kilomètre à l'est de la route qui va d'Am Dofog (Um Dafog) à la mare de Tizi (Tisi) par Rahad Dihin (Dihn), Rahad Sahabeia (Sahabaia), Rahad Soumou (Sumua), Rahad Koudioufou (Kujufu) et Rahad Boarit (Boarig) et parallèlement à celle-ci jusqu'à un point situé à 1 kilomètre à l'est de l'extrémité orientale de la mare de Tizi (Tisi).

(*f.*) From this point it runs in a straight line to the beacon on Jebel Keili.

(*g.*) Thence it runs in a straight line to the pool of Nzili.

(*h.*) The tribes or individuals belonging to the Sudan shall have the right to water at the Rahads along the above-mentioned road and at Tisi (Tizi).

SECTION III.

(*a.*) The frontier, on leaving the pool of Nzili, runs in a straight line north-eastwards to a small jebel situated 6 kilometres to the east of the triangulation beacon on Jebel Laja (Ladja).

(*b.*) From there it takes a northerly direction and passes in a straight line to the summit of Jebel Eberei, which is 9 kilometres north-east from the triangulation beacon on Jebel Laja (Ladja).

(*c.*) From this point it runs in a straight line in a north-westerly direction to the conspicuous rocks situated on the road from Muterr (Mouterr) to Gilambeir (Guileimber), about 3 kilometres away from the latter village.

(*d.*) Running thence in a straight line, the frontier takes a northerly course, crosses Wadi Seirgilong (Serguilong), and runs to the summit of Jebel Kullua (Koulloua), leaving the village of Sarafaia on the French side.

(*e.*) From this summit it runs in a westerly direction in a straight line to the top of Hagar Tugula (Tougoula).

(*f.*) From Hagar Tugula (Tougoula) it runs in a straight line towards the south-west to the junction of the Wadi Marafang (Marafaing) or Mundangya (Moundangya) with the Wadi Lujugo (Loudjouga).

(*g.*) From this point it runs in a straight line in a northerly

(*f.*) De là la frontière va en ligne droite au signal géodésique du Djebel Keili.

(*g.*) Puis en ligne droite à la mare de Nzili.

(*h.*) Les tribus ou individus appartenant au Soudan auront le droit de faire de l'eau aux rahads situées sur la route ci-dessus mentionnée et à la mare de Tizi (Tisi).

SECTION III.

(*a.*) La frontière quitte la mare de Nzili pour atteindre en ligne droite, dans la direction du nord-est, un petit djebel situé à 6 kilomètres à l'est du signal géodésique du Djebel Ladja (Laja).

(*b.*) De là, toujours en ligne droite, elle prend la direction nord et passe au sommet du Djebel Eberei, qui se trouve à 9 kilomètres au nord-est du signal géodésique de Ladja (Laja).

(*c.*) De ce point, elle passe en ligne droite et en direction nord-ouest aux rochers remarquables qui se trouvent sur la route de Mouterr (Muterr) à Guileimber (Gilambeir), à 3 kilomètres environ de ce dernier village.

(*d.*) De là, en ligne droite, elle prend la direction du nord, coupe l'Oued Serguilong (Seirgilong), laisse du côté français le village de Sarafaïa et passe au sommet du Djebel Koulloua (Kullua).

(*e.*) De ce sommet dans la direction de l'ouest, elle va en ligne droite au sommet du Hadjer Tougoula (Tugula).

(*f.*) Du Hadjer Tougoula (Tugula), en ligne droite, elle va vers le sud-ouest au confluent de l'Oued Marafaing (Marafang) ou Moundangya (Mundangya) et de l'Oued Loudjouga (Lujugo).

(*g.*) De ce point, allant vers le nord et en ligne droite elle coupe direction and cuts the road from Mundangya (Moundangya) to Lujugo (Loudjouga) half way between those villages.

(*h.*) Running thence in a north-westerly direction in a straight line it cuts the road from Mundangya (Moundangya) to Timassi half way between those villages.

(*i.*) Thence it runs in a north-westerly direction in a straight line to the point where the Wadi Mundangya (Moundangya) cuts the road from Komoru (Koumorro) to Timassi.

(*j.*) After this the frontier takes a west-north-westerly direction and runs in a straight line to a "murraia" tree situated on the Wadi Kajul (Kadjoul) at about 1 kilometre south of the village of Siarrei.

(*k.*) Thence it runs in a north-westerly direction in a straight line to the summit of Hagar Dakandei, which is about 7 kilometres distant from this "murraia" tree. It then takes a north-north-westerly direction, and runs in a straight line to the summit of Hagar Mirsi.

(*l.*) From Hagar Mirsi the frontier runs northwards in a straight line to a clearing on the track from the village of Babel or Muda West (Mouda Ouest) to the village of Fofogiat (Fogfogui), which clearing is about 3 kilometres from the village of Babel.

(*m.*) From this point it runs in a north-north-easterly direction in a straight line to the Boundary Tree (Latitude 11° 47′ North, Longitude 22° 34′ East) which is situated on the road from the village of Kortanjo to the village of Momona, at an approximate distance of 6 kilometres from Kortanjo.

(*n.*) Thence it runs in a straight line in a north-north-easterly

par son milieu la route de Moundangya (Mundangya) à Loudjouga (Lujugo).

(*h.*) Ensuite, allant en direction nord-ouest et en ligne droite, elle coupe par son milieu la route de Moundangya (Mundangya) à Timassi.

(*i.*) De là, en ligne droite et en direction nord-ouest, elle passe au point où l'Oued Moundangya (Mundangya) coupe la route de Koumorro (Komoru) à Timassi.

(*j.*) Ensuite, elle se dirige vers l'ouest-nord-ouest et passe en ligne droite à un arbre (murraia) situé sur l'Oued Kadjoul (Kajul) approximativement à 1 kilomètre au sud du village de Siarrei.

(*k.*) Elle va ensuite en ligne droite dans la direction du nord-ouest au sommet du Hadjer Dakandeï distant de 7 kilomètres environ de cet arbre. Prenant la direction nord-nord-ouest, elle passe ensuite en ligne droite au sommet du Hadjer Mirsi.

(*l.*) Du Hadjer Mirsi, orientée vers le nord et allant en ligne droite, elle passe à une clairière située sur la piste qui va du village de Babel ou Mouda ouest (Muda West) au village de Fogfogui (Fofogiat) et approximativement à 3 kilomètres du village de Babel.

(*m.*) De ce point elle va en droite ligne et en direction nord-nord-est à l'arbre frontière, Latitude 11° 47′ nord et Longitude 22° 34′ est, qui est situé sur la route de Kortanjo à Momona et à une distance approximative de 6 kilomètres de Kortanjo.

(*n.*) Elle passe ensuite en droite ligne et en direction nord-direction to the summit of Hagar Hagara.

(*o.*) Thence the frontier runs in a straight line in a north-north-easterly direction to the "hameida" tree called Koatuya (Koatouya), Latitude 12° 03′ North and Longitude 22° 38′ East, which is on the road from the village of Mogororo (Mougororo) to Darfur (Darfour).

(*p.*) Thence it runs in a straight line in a north-easterly direction to the point where a line drawn from the summit of Hagar Zira to this "hameida" tree would cut the Wadi Saleh.

(*q.*) The frontier then runs along the bed of the Wadi Saleh in a westerly direction until it reaches the Wadi Azum (Azoum).

(*r.*) It then follows the bed of the Wadi Azum (Azoum) to its junction with the Wadi Kaja (Kadja). This junction is situated to the east of and near to the triangulation beacon, whose coordinates are Latitude 12° 02′ 17″ North and Longitude 22° 28′ 18″ East.

SECTION IV.

(*a.*) From this junction the frontier follows the median line of the Wadi Kaja to its junction with the Wadi Bir Kunjan (Bir Koundjane) or Atamarga.

(*b.*) It then follows the bed of that wadi in a north-easterly direction to a point exactly 2½ kilometres due south of the southern summit of the most eastern Jebel Gunguri (Goundjouri) which is shown on the map height 817.

(*c.*) Thence it runs in a straight line due northwards to this point marked 817.

(*d.*) Thence it follows the crest of the eastern Jebel Gunguri (Goundjouri) to the northern summit, which is shown on the map height 839.

nord-est au sommet du Hadjer Hagara.

(*o.*) De là, en ligne droite, toujours en direction nord-nord-est, elle passe à l'arbre (hameida) appelé Koatouya (Koatuya). Latitude 12° 03′ nord et Longitude 22° 38′ est, sur la route de Mougororo (Mogororo) au Darfour.

(*p.*) Ensuite, elle passe en ligne droite et en direction nord-est au point où la ligne partant du sommet du Hadjer Zira et aboutissant à cet arbre coupe l'Oued Saleh.

(*q.*) La frontière suit le lit de l'Oued Saleh en direction ouest jusqu'à son confluent avec l'Oued Azoum (Azum).

(*r.*) Elle se confond avec le lit de cet oued jusqu'à son confluent avec l'Oued Kadja (Kaja), confluent situé à l'est et dans le voisinage du signal géodésique dont les coordonnées sont Latitude 12° 02′ 17″ nord et Longitude 22° 28′ 18″ est.

SECTION IV.

(*a.*) De ce confluent, la frontière suit la ligne médiane du lit de l'Oued Kadja (Kaja) jusqu'au confluent de celui-ci avec l'Oued Bir Koundjane (Bir Kunjan) ou Atamarga.

(*b.*) Elle suit le lit de cet oued en direction du nord-est jusqu'à un point situé exactement à 2 kilomètres 500 au sud du sommet sud de la partie la plus orientale du Djebel Goundjouri (Gunguri), coté sur la carte 817.

(*c.*) De là, elle passe en ligne droite à ce sommet.

(*d.*) Elle suit ensuite la crête du massif oriental du Djebel Goundjouri (Gunguri) jusqu'au sommet nord coté 839.

(*e.*) Thence it runs in a north-easterly direction in a straight line to the summit of Jebel Njunun (Djounoun).

(*f.*) Thence it runs in a west-north-westerly direction in a straight line to the summit of Jebel Albas.

(*g.*) Thence, still in a west-north-westerly direction, it runs in a straight line to the eastern peak of Jebel Tarei, which is shown as height 853 on the map.

(*h.*) Thence it runs in a north-westerly direction in a straight line to a point exactly 5 kilometres due north of the triangulation beacon on Jebel Arara or Anyatei.

(*i.*) From this point it runs straight to that beacon.

(*j.*) Thence it runs in a straight line in a south-westerly direction to a point situated half-way between the Masalit village of Bardei and the Dagu village of Am Dagl (Am Daguel).

(*k.*) From this point it runs in a west-south-westerly direction in a straight line to a point exactly 2½ kilometres north of the triangulation beacon on Jebel Hungar (Hangara).

(*l.*) The frontier continues along this same straight line until it cuts the Wadi Kaja at about 2 kilometres north of the village of Andara, which is on French territory.

(*m.*) From this intersection it follows the median line of the bed of the Wadi Kaja (Kadja) up to its junction with the Wadi Asunga (Azounga).

(*n.*) Thence it follows the median line of the Wadi Asunga (Azounga) to the point at which the track running north and south through the village of Kudri (Koudri) cuts that wadi. This point of intersection is situated 3½ kilometres north-

(*e.*) De là, elle va en ligne droite et en direction nord-est au sommet du Djebel Djounoun (Njunun).

(*f.*) De ce sommet, elle va en ligne droite et en direction ouest-nord-ouest jusqu'au sommet du Djebel Albas.

(*g*) De là, toujours en ligne droite et en direction ouest-nord-ouest, elle passe au sommet oriental du Djebel Tarei, coté 853 sur la carte.

(*h.*) Ensuite, en ligne droite et en direction nord-ouest, elle va à un point situé exactement à 5 kilomètres au nord du signal géodésique du Djebel Arara ou Anyatéi.

(*i.*) Elle passe ensuite en ligne droite à ce signal.

(*j.*) De là, elle se dirige en ligne droite dans la direction du sud-ouest jusqu'à un point situé à mi-chemin entre le village Massalit de Bardei et le village Dadjo d'Am Daguel (Am Dagl).

(*k.*) De ce point, elle prend une direction ouest-sud-ouest et va en ligne droite, jusqu'à un point situé exactement à 2 kilomètres 500 au nord du signal géodésique du Djebel Hangara (Hungar).

(*l.*) La frontière suit la même ligne droite pour aboutir sur l'Oued Kadja (Kaja) à 2 kilomètres environ au nord du village d'Andara, qui est en territoire français.

(*m*) De ce point d'intersection, elle suit la ligne médiane du lit de l'Oued Kadja (Kaja) jusqu'au confluent de celui-ci avec l'Oued Azounga (Asunga).

(*n.*) Elle suit ensuite la ligne médiane de l'Oued Azounga (Asunga) jusqu'au point où le sentier orienté nord-sud qui passe au village de Koudri (Kudri) coupe l'oued. Ce point d'intersection est situé à 3 kilomètres 500 au nord-nord-ouest north-west of the triangulation beacon on Jebel Kudri (Koudri).

(*o.*) It is understood that all existing watering, fishing or other rights of either side in the beds of the wadis Asunga (Azounga) and Kaja (Kadja) wherever the boundary follows their beds are preserved.

Section V.

(*a.*) From the point last mentioned the frontier runs in a north-easterly direction in a straight line to the beacon on Jebel Firni.

(*b.*) Thence it runs in a straight line to the summit of Jebel Selika.

(*c.*) It then follows the watershed between the Wadi Kuruma (Kourouma) and the Wadi Eiteta on the top of the plateau, making an abrupt turn to the east, and reaches the conspicuous tree, which is shown on the map height 1176.

(*d.*) From this tree the frontier runs in a straight line in a north-easterly direction to the point shown on the map height 1122, and from there, still in a straight line, it runs in an easterly direction to the beacon on Jebel Agilei (Arguilé).

(*e.*) From this beacon it goes in a straight line in a north-easterly direction to the conspicuous tree shown on the map height 1125.

(*f.*) From this tree it turns towards the east and passes over the col situated between Jebel Kurkuba (Kourkouba) and Jebel Rufeida (Roufaida); it follows for an approximate distance of 2 kilometres the small wadi which has its source in this col and which flows towards the east.

(*g.*) After leaving this wadi the frontier continues to run in

du signal géodésique de Koudri (Kudri).

(*o.*) Il est entendu que tous les droits existants d'abreuvoir, de pêche ou autres dans le lit des oueds Azounga (Asunga) et Kadja (Kaja) partout où la frontière suit leur lit seront conservés de chaque côté.

Section V.

(*a.*) De ce dernier point, elle part dans la direction du nord-est en ligne droite et passe au signal du Djebel Firni.

(*b.*) De là, elle passe en ligne droite au sommet du Djebel Selika.

(*c.*) Elle suit la ligne de partage des eaux entre l'Oued Kourouma (Kuruma) et l'Oued Eiteta qui passe sur le plateau en faisant un coude brusque à l'est pour atteindre l'arbre remarquable coté 1176 sur la carte.

(*d.*) De cet arbre, elle va en ligne droite, dans la direction du nord-est, au point coté 1122 et de là, encore en ligne droite, dans la direction de l'est, elle passe au signal du Djebel Arguilé (Agilei).

(*e.*) De ce signal, elle va en ligne droite et en direction nord-est à l'arbre remarquable coté 1125 sur la carte.

(*f.*) De cet arbre, elle se dirige vers l'est en passant au col situé entre le Djebel Kourkouba (Kurkuba) et le Djebel Roufaida (Rufeida); elle suit le petit oued qui a sa source dans ce col et coule vers l'est sur une distance approximative de 2 kilomètres.

(*g.*) Elle quitte ensuite cet oued et, toujours orientée vers l'est, an easterly direction to a point half-way between the Masalit village of Hegliga and the Tama village of Niegerri (Niegerrei), which are about 1 kilometre apart.

(*h.*) From this point it runs in a north-easterly direction in a straight line to the summit of Jebel Abu Ligam (Abouligam).

(*i.*) Thence it runs in an easterly direction in a straight line to a point 3 kilometres west of Jebel Kishkish, and from that point in a north-easterly direction in a straight line to a rock shown height 1091 on the map.

(*j.*) From this rock the frontier runs in a straight line in a north-westerly direction to a point 1 kilometre to the east of the triangulation beacon situated on the plateau at the south end of Jebel Om.

(*k.*) From there it runs up on to the plateau and follows the centre line thereof from south to north until it reaches the main summit. It then follows the centre line of the northern part of the plateau up to a point situated about 1 kilometre east of the wells of Goz Bedin (Bedine).

(*l.*) From this point the frontier takes a westerly direction and runs in a straight line to a point 200 metres north of these wells. Continuing thence in a straight line, it reaches Rahad Mugaddad (Mougaddad), which is situated at the junction of the Wadi Atrun (Atroun) with the Wadi Sineit.

(*m.*) Thence it runs in a straight line to a point on the Wadi Bueisa (Bouessa) or Gumara (Goumara) situated one and a half kilometres to the east of the wells of Bueisa (Bouessa).

(*n.*) From this point the frontier follows the bed of the wadi itself in a westerly direction until

elle passe à un point situé à mi-distance du village Massalit de Hegliga et du village Tama de Niegerrei (Niegerri), éloignés l'un de l'autre de 1 kilomètre environ.

(*h.*) De là, en ligne droite et en direction nord-est, elle passe au sommet du Djebel Abouligam (Abu Ligam).

(*i.*) De là, en direction est, elle passe en ligne droite à 3 kilomètres à l'ouest du Djebel Kishkish, puis en direction nord-est en ligne droite à un rocher coté 1091 sur la carte.

(*j.*) De là, en direction nord-ouest et en ligne droite elle passe à 1 kilomètre à l'est du signal géodésique qui se trouve sur le plateau à l'extrémité sud du Djebel Om.

(*k.*) De là, elle monte sur le plateau dont elle suit la ligne médiane du sud au nord, puis elle passe sur le principal sommet ; elle suit la ligne médiane de la partie nord du plateau jusqu'à un point situé à environ 1 kilomètre à l'est des puits de Goz Bedine (Goz Bedin).

(*l.*) La frontière passe ensuite en ligne droite à 200 mètres au nord de ces puits en prenant la direction de l'ouest, puis toujours en ligne droite elle atteint la Rahad Mougaddad (Mugaddad), située au confluent de l'Oued Atroun (Atrun) et de l'Oued Sineit.

(*m.*) De la, elle passe en ligne droite à un point sur l'Oued Bouessa (Bueisa) ou Goumara (Gumara) situé à 1 kilomètre et demi à l'est des puits de Bouessa (Bueisa).

(*n.*) De ce point, elle suit le lit de l'oued en direction ouest jusqu'aux puits de Bouessa it reaches the Bueisa (Bouessa) wells, which are common to the tribes living on either bank.

SECTION VI.

(*a.*) From Bueisa (Bouessa) wells, the frontier runs in a straight line in a north-westerly direction to the triangulation beacon on Hagar Dirru (Dirro), Latitude 14° 17′ 33″ North and Longitude 22° 25′ 30″ East.

(*b.*) Thence it runs in a straight line to the triangulation beacon on the south-western end of Jebel Murra (Mourra), Latitude 14° 18′ 38″ North and Longitude 22° 25′ 36″ East.

(*c.*) Thence it follows the crest of Jebel Murra (Mourra) to another beacon marked height 1129 on the map.

(*d.*) From this beacon it runs in a straight line in a northerly direction to a point one kilometre west of the village of Nganga.

(*e.*) Continuing in a straight line thence it runs in a north-north-westerly direction to Goz Memeriko, which it reaches at a point three and a half kilometres north-east of the triangulation beacon of Kulbus (Koulbous).

(*f.*) Thence the frontier takes a northerly direction and runs in a straight line to Goz Gemal Harro (Djemal Harro) which it crosses at a point two kilometres to the west of the summit of Hagar Turat (Tourat).

(*g.*) From that point it runs approximately northwards in a straight line to Rahad Ardeib (Ardeb) or Keita. Thence it runs in a straight line to Hagar Kibish (Kibich) and from there, also in a straight line, to Rahad Nabakai.

(*h,*) From this rahad it runs in a straight line to Rahad Gibir (Guiber).

(*i.*) Thence it follows the bed of the Wadi Baringala (Bérin-

(Bueisa), qui sont communs aux tribus riveraines.

SECTION VI.

(*a.*) Des puits de Bouessa (Bueisa) elle va en ligne droite et en direction nord-ouest au signal géodésique du Hadjer Dirro (Dirru), Latitude 14° 17′ 33″ nord et Longitude 22° 25′ 30″ est.

(*b.*) De là, elle passe en ligne droite au signal géodésique placé à l'extrémité sud-ouest du Djebel Mourra (Murra), Latitude 14° 18′ 38″ nord et Longitude 22° 25′ 36″ est.

(*c.*) Elle suit la crête du Djebel Mourra (Murra) jusqu'à un autre signal coté 1129 sur la carte.

(*d.*) De ce point, se dirigeant en ligne droite vers le nord, elle passe à un point situé à 1 kilomètre à l'ouest du village de Nganga.

(*e.*) De là, toujours en ligne droite, elle atteint en direction nord-nord-ouest le Goz Mémériko en un point situé à 3 kilomètres et demi au nord-est du signal géodésique de Koulbous (Kulbus).

(*f.*) De là, elle se dirige en ligne droite vers le nord et passe au Goz Djemal Harro (Gemal Harro), qu'elle atteint en un point situé à 2 kilomètres à l'ouest du sommet du Hadjer Tourat (Turat).

(*g.*) De là, elle va en direction approximativement nord et en ligne droite à la Rahad Ardeb (Ardeib) ou Keita ; de là, en ligne droite, au Hadjer Kibich (Kibish) et de là, en ligne droite encore, à la Rahad Nabakai.

(*h.*) De ce point, elle va en ligne droite à la Rahad Guiber (Gibir).

(*i.*) De ce point elle suit le lit de l'Oued Béringala (Baringala)

gala) for a distance of two kilometres in a westerly direction.

(*j.*) The frontier then leaves the wadi and runs in a north-north-easterly direction in a straight line to Rahad Digui.

(*k.*) Thence it runs in a straight line in an easterly direction to Rahad Shurak (Chourak).

(*l.*) It then runs in a straight line in a north-easterly direction to the spur marked as height 979 on the map.

(*m.*) Thence it runs in an east-north-easterly direction in a straight line to a point midway between Jebel Sendi and Jebel Wustani (Oustani).

(*n.*) From this point it goes approximately eastwards in a straight line to the tree which was used as a beacon for triangulation and which is shown height 984 on the map.

(*o.*) Thence the frontier runs in a roughly east-north-easterly direction in a straight line to Hagar Jukujuku (Dioukou - Dioukou), leaving the wells of Duwei (Douai) to the north and those of Fogi (Fogué) and Girgira (Guirguéra) to the south.

(*p.*) From Hagar Jukujuku (Dioukou-Dioukou) it takes an approximately northern direction and runs in a straight line to the wells of Gebelud (Diabelout) which are common to the tribes living on either bank.

(*q.*) Thence the frontier runs in a straight line in a north-north-westerly direction to a point on the Wadi Oruba (Orouba) one kilometre away from the junction of that wadi with Lake Undur (Oumdour).

(*r.*) Thence it follows the bed of the wadi until it reaches Lake Undur (Oumdour). The waters of the lake are common to the tribes living on either bank.

sur une distance de 2 kilomètres et dans la direction de l'ouest.

(*j.*) Elle quitte ensuite l'oued et prend une direction nord-nord-est pour aller en ligne droite à la Rahad Digui.

(*k.*) De la Rahad Digui elle va en ligne droite vers l'est à la Rahad Chourak (Shurak).

(*l.*) De là, elle passe en direction nord-est en ligne droite à l'éperon coté 979 sur la carte.

(*m.*) De ce point elle prend une direction est-nord-est et passe en ligne droite à mi-distance entre le Djebel Sendi et le Djebel Oustani (Wustani).

(*n.*) Elle atteint ensuite, en direction approximativement est, en ligne droite, l'arbre coté 984, qui a servi de signal géodésique.

(*o.*) De là, elle prend une direction approximativement est-nord-est laissant les puits de Douai (Duwei) au nord et les puits de Fogué (Fogi) et de Guirguéra (Girgira) au sud et en ligne droite elle passe au Hadjer Dioukou-Dioukou (Jukujuku).

(*p.*) De ce hadjer, elle prend une direction approximativement nord et passe en ligne droite aux puits de Diabelout (Gebelud) qui sont communs aux tribus riveraines.

(*q.*) De ce point, elle va en ligne droite, en direction nord-nord-ouest, à un point situé sur l'Oued Orouba (Oruba), distant de 1 kilomètre du point où cet oued se jette dans la mare d'Oumdour (Undur).

(*r.*) Elle suit le lit de cet oued et atteint la mare d'Oumdour (Undur) dont les eaux sont communes aux tribus riveraines.

SECTION VII.

(*a.*) From Lake Undur the frontier follows the Wadi Tini (Tiné) until its junction with the Wadi Greigi (Greigui) or Bahai.

(*b.*) Thence it follows the bed of the latter wadi in a north-easterly direction until the junction of the most easterly branch of this wadi with the Wadi Howa at a point situated about 2,750 metres south-west of one of the geodetic beacons on Jebel Anagarra (Hangara) of which the co-ordinates are Latitude 15° 44′ 04″ North and Longitude 23° 07′ 55″ East.

(*c.*) The wells at Tini (Tiné) and Bahai are common to the tribes living on either bank.

SECTION VIII.

(*a.*) From the junction of the most easterly branch of the Wadi Greigi (Greigui) or Bahai with the Wadi Howa the frontier follows the centre line of the valley of the Wadi Howa as far as its intersection by the 24th meridian of eastern longitude.

(*b.*) To mark the intersection of the Wadi Howa with the 24th meridian, which takes place about Latitude 15° 43′ North, a line of trees has been cleared across the valley.

(*c.*) The meridian passes through Rahad Wahal and this rahad is common to the tribes living on either bank.

(*d.*) On the south bank, about 20 metres south of the sandy bank of the valley, a "heglig" tree has had the letters 24 M branded upon it and the lower part of the trunk has been ring-barked. About 400 metres north of this tree a second "heglig" tree has been similarly ring-barked and the figures 24 cut upon it.

SECTION VII.

(*a.*) De la mare d'Oumdour, la frontière suit l'Oued Tiné (Tini) jusqu'à son confluent avec l'Oued Greigui (Greigi) ou Bahai.

(*b.*) Puis elle suit le lit de cet oued en direction nord-est jusqu'au confluent du bras le plus à l'est de cet oued avec l'Oued Howa en un point situé à environ 2,750 mètres au sud-ouest d'un des signaux géodésiques du Djebel Hangara (Anagarra) dont les coordonnées sont Latitude 15° 44′ 04″ nord et Longitude 23° 07′ 55″ est.

(*c.*) Les puits de Tiné (Tini) et de Bahai sont communs aux tribus riveraines.

SECTION VIII.

(*a.*) La frontière, du confluent du bras situé le plus à l'est de l'Oued Bahai ou Greigui (Greigi) avec l'Oued Howa, suit la ligne médiane de la vallée de cet oued jusqu'à son intersection avec le méridien 24° est.

(*b.*) Pour marquer l'intersection de l'Oued Howa avec le méridien 24°, intersection qui se trouve approximativement à hauteur du parallèle 15° 43′ nord, une ligne d'arbres a été coupée en travers de la vallée.

(*c.*) Ce méridien coupe la Rahad Wahal, mare commune aux tribus riveraines.

(*d.*) Sur la rive sud, à environ 20 mètres au sud de la berge sablonneuse de la vallée, les lettres 24 M ont été marquées au feu sur un hedjilidj dont le tronc a été écorcé en anneau à la partie inférieure. Dans le lit de la vallée, à une distance d'environ 400 mètres au nord de cet arbre, un deuxième hedjilidj a été écorcé de même et on y a entaillé le chiffre 24.

(*e.*) The valley of the Wadi Howa, which reaches a width of several kilometres, is clearly defined by trees and vegetation, and by an abrupt change from sandy soil on its banks to clay soil in the bed.

(*f.*) The valley will remain common to the tribes living on either bank and each tribe will retain such rights to dig wells, cultivate, and graze within the limits of the valley as they have hitherto enjoyed.

(*g.*) From the intersection of the wadi and the 24th meridian the frontier follows that meridian northwards up to the point where it meets the parallel of Latitude 19° 30′ North.

(*h.*) The 24th meridian, which passes through desert country, has only been fixed on the ground at certain points.

(*i.*) North of the Wadi Howa it passes between the two beacons on Hagar Kimairi (Kinairi).

(*j.*) Further north it runs to the east of a large heap of stones which mark an astronomically fixed point at the foot of the Erdi Ma cliffs. The co-ordinates of this point are Latitude 18° 38′ 59″ North and Longitude 23° 59′ 49″ East.

(*k.*) At the intersection of parallel 19° 30′ North and meridian 24° East there is a small heap of stones to mark the end of the boundary.

(*l.*) The rights of control beyond the 24th meridian recognised by the Convention of the 8th September, 1919, as belonging to the French Government include the right to take water from the wells of Sendia (Sendi) and from other watering places situated between that meridian and Longitude 24° 30′ East.

(*e.*) La vallée de l'Oued Howa, qui atteint une largeur de plusieurs kilomètres, est nettement définie par des arbres et de la végétation et par le changement brusque du sol sablonneux sur les berges en sol argileux dans le lit.

(*f.*) La vallée sera commune aux tribus riveraines, chacune d'elles conservant tels droits dont elle a joui jusqu'à présent, creuser des puits, cultiver, faire pâturer dans les limites de la vallée.

(*g.*) A partir de l'intersection de l'oued avec le méridien 24°, la frontière suit le méridien 24° en direction du nord, jusqu'à sa rencontre avec le parallèle 19° 30′ nord.

(*h.*) Le méridien 24°, qui passe en région désertique n'a pu être répéré sur le terrain qu'en certains points seulement.

(*i.*) Au nord de l'Oued Howa, il passe entre les deux signaux du Hadjer Kinairi (Kimairi).

(*j.*) Plus au nord, il passe à l'est d'un gros tas de pierres qui indique au pied des falaises de l'Erdi Ma l'emplacement d'un point astronomique dont les coordonnées sont: Latitude 18° 38′ 59″ nord et Longitude 23° 59′ 49″ est.

(*k.*) A l'intersection du parallèle 19° 30′ et du méridien 24°, un petit tas de pierres marque l'extrémité de la frontière.

(*l.*) Le droit de surveillance au delà du méridien 24° reconnu au Gouvernement français par la Convention du 8 septembre 1919 comporte le droit de faire de l'eau aux puits de Sendi (Sendia) et autres aiguades situées entre ce méridien et le méridien 24° 30 est.

General Clauses.

(*a.*) Where the frontier follows a wadi, cuts a lake or rahad or changes its direction at either of such, the watering rights existing therein will be preserved by the inhabitants on either side.

(*b.*) After the delimitation of the frontier is finished, a period of six months will be granted to the natives on either side of the frontier for them to choose the territory on which they wish permanently to reside.

(*c.*) This period will count from the day on which notification shall have been given to those interested.

(*d.*) This day will be fixed beforehand by agreement between the two Governments. At the expiration of the period mentioned, the local administrators will take the necessary measures to stop tribes or individuals who may cross the frontier without authority from establishing themselves on their respective territories.

(*e.*) Two maps signed by each of the Commissioners accompany this protocol.

(*f.*) In cases where the details of the map do not appear to correspond exactly with the wording of the protocol, it is the wording of the protocol which must be strictly followed.

(*g.*) When mention of a village is made in the text, it is understood that it refers to the position of such a village as found by the Commissioners on the ground, *i.e.*, to the position as shown on the map.

(*h.*) From parallel 19° 30′ north to parallel 11° north, the work of delimitation and of discussion on the ground was duly carried out by Lieutenant-Colonel H. D. Pearson, D.S.O., R.E., on the English side. The site of

Dispositions générales.

(*a.*) Là où la frontière suit un oued, coupe une mare ou y change de direction, les droits à l'eau tels qu'ils y existent pour les habitants de chaque côté seront conservés.

(*b.*) Après l'achèvement de la délimitation, un délai de six mois sera accordé aux indigènes de chaque côté de la frontière pour choisir le territoire sur lequel ils veulent fixer leur résidence.

(*c.*) Ce délai comptera du jour où la notification en aura été faite aux intéressés.

(*d.*) Ce jour sera préalablement décidé d'accord entre les deux Gouvernements. Ce délai expiré, les administrations locales prendront les mesures nécessaires pour empêcher l'établissement sur leurs territoires respectifs des tribus ou des individus qui auraient franchi la frontière sans autorisation.

(*e.*) Deux cartes signées par chacun des Commissaires accompagnent le présent protocole.

(*f.*) Dans le cas où les détails de la carte ne paraîtraient pas correspondre exactement au texte du protocole, il y aura lieu de s'en tenir strictement au texte.

(*g.*) Lorsque dans le texte il est fait mention d'un village, il est entendu qu'il s'agit de l'emplacement tel que les Commissaires l'ont trouvé sur le terrain, c'est-à-dire tel qu'il figure sur la carte.

(*h.*) Du parallèle 19° 30′ au parallèle 11° de latitude nord les travaux de délimitation et les discussions sur le terrain ont été conduites avec compétence par le Lieutenant-Colonel Pearson, D.S.O., R.E., du côté anglais.

Colonel Pearson's grave at Um Dafog (Am Dofog) will be recognised as British territory, and the right of access to it will be reserved in perpetuity for such persons as are duly authorised by the Sudan Government.

Done in duplicate at London, the 10th day of January, 1924.

A. A. R. BOYCE,
British Commissioner.

L'emplacement de la tombe du Colonel Pearson à Am Dofog (Um Dafog) sera reconnu comme territoire britannique et le droit d'accès y sera réservé à perpétuité aux personnes dûment autorisées par le Gouvernement du Soudan.

Fait en double exemplaire à Londres, le dix janvier 1924.

Le Commissaire français,
GROSSARD.

Annex 24

ITALO-ANGLO-EGYPTIAN ACCORD OF 20 JULY 1934 RELATING TO THE LIBYA-SUDAN BOUNDARY

Exchange of notes between His Majesty's Government
in the United Kingdom and the Egyptian Government
and the Italian Government constituting agreement
respecting the boundary between the Sudan and Libya,
Rome, 20 July 1934, in League of Nations:
Treaty Series, No. 3567, Vol. CLV, 1934-1935,
pp. 46-51.

N° 3567.

GRANDE-BRETAGNE ET IRLANDE DU NORD ET ÉGYPTE ET ITALIE

Echange de notes comportant un accord relatif à la frontière entre le Soudan et la Libye. Rome, le 20 juillet 1934.

GREAT BRITAIN AND NORTHERN IRELAND AND EGYPT AND ITALY

Exchange of Notes constituting an Agreement respecting the Boundary between the Sudan and Libya. Rome, July 20th, 1934.

No. 3567. — EXCHANGE OF NOTES[1] BETWEEN HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM AND THE EGYPTIAN GOVERNMENT AND THE ITALIAN GOVERNMENT CONSTITUTING AN AGREEMENT RESPECTING THE BOUNDARY BETWEEN THE SUDAN AND LIBYA. ROME, JULY 20TH, 1934.

Nº 3567. — SCAMBIO DI NOTE[1] FRA IL GOVERNO DI SUA MAESTA NEL REGNO UNITO ED IL GOVERNO EGIZIANO, ED IL GOVERNO ITALIANO, COSTITUENTE UN ACCORDO RELATIVO AL CONFINE FRA LA LIBIA E IL SUDAN. ROMA, IL 20 LUGLIO 1934.

Nº 3567. — ÉCHANGE DE NOTES[1] ENTRE LE GOUVERNEMENT DE SA MAJESTÉ DANS LE ROYAUME-UNI ET LE GOUVERNEMENT ÉGYPTIEN, D'UNE PART, ET LE GOUVERNEMENT ITALIEN, D'AUTRE PART, COMPORTANT UN ACCORD RELATIF A LA FRONTIÈRE ENTRE LE SOUDAN ET LA LIBYE. ROME, LE 20 JUILLET 1934.

English, French and Italian official texts communicated by His Majesty's Secretary of State for Foreign Affairs in Great Britain. The registration of this Exchange of Notes took place December 20th, 1934.

Textes officiels anglais, français et italien communiqués par le Secrétaire d'Etat aux Affaires étrangères de Sa Majesté en Grande-Bretagne. L'enregistrement de cet échange de notes a eu lieu le 20 décembre 1934.

I.

SIR E. DRUMMOND TO SIGNOR MUSSOLINI.

BRITISH EMBASSY.

ROME, *July 20th*, 1934.

YOUR EXCELLENCY,

I have the honour to suggest to your Excellency that the line of the frontier between Libya and the Sudan be fixed as follows :

2. Starting from the point of intersection of 25th meridian east of Greenwich

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[1] Came into force July 20th, 1934.

[2] Translated by the Secretariat of the League of Nations, for information.

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[2] TRADUCTION. — TRANSLATION.

I.

SIR E. DRUMMOND A MONSIEUR MUSSOLINI.

AMBASSADE BRITANNIQUE.

ROME, *le 20 juillet* 1934.

MONSIEUR LE PRÉSIDENT,

J'ai l'honneur de vous proposer que la ligne frontière entre la Libye et le Soudan soit fixée comme suit :

2. Partant du point d'intersection du 25e méridien est de Greenwich et du

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[1] Entré en vigueur le 20 juillet 1934.

[2] Traduit par le Secrétariat de la Société des Nations, à titre d'information.

with parallel 22° north, the frontier follows the 25th line of meridian in a southerly direction as far as its intersection with parallel 20° north ; from this point it follows parallel 20° north in a westerly direction as far as its intersection with 24th meridian east of Greenwich ; from this point it follows 24th meridian east of Greenwich in a southerly direction as far as its junction with the frontier of French possessions.

3. His Majesty's Government in the United Kingdom renounce all claim on the part of the Sudan to territory to the west and north of the line of the frontier as set out above ; the Italian Government, for their part, renounce all claim to territory south and east of the said line of frontier.

4. I understand that a note in similar terms is being addressed to your Excellency by the Egyptian Minister, and I have the honour to inform your Excellency that the present note and the Egyptian note in similar terms represent the proposals of the two Powers on behalf of the Sudan. I accordingly have the honour to suggest that the present note and the Egyptian note, and your Excellency's replies in similar terms to these notes, be regarded as placing on record the agreement reached between the Italian Government on the one side and the Governments of the two Powers on the other side in this matter, and that this agreement shall come into force as from the date of this note.

I avail, etc.

Eric Drummond.

22° parallèle nord, la ligne frontière suit la ligne du 25° méridien, en direction sud, jusqu'à son intersection avec le 20° parallèle nord ; de ce point, elle suit le 20° parallèle nord en direction ouest jusqu'à son intersection avec le 24° méridien est de Greenwich ; de ce point, elle suit le 24° méridien est de Greenwich en direction sud jusqu'à sa jonction avec la frontière des possessions françaises.

3. Le Gouvernement de Sa Majesté dans le Royaume-Uni renonce à toute prétention, de la part du Soudan, au territoire situé à l'ouest et au nord de la ligne frontière précitée ; le Gouvernement italien, de son côté, renonce à toute prétention au territoire situé au sud et à l'est de ladite ligne frontière.

4. Je crois savoir que le Ministre d'Egypte vous adresse une note conçue en termes analogues, et j'ai l'honneur de vous informer que la présente note et la note égyptienne conçue en termes analogues représentent les propositions des deux Puissances pour le compte du Soudan. En conséquence, j'ai l'honneur de proposer que la présente note et la note égyptienne ainsi que les réponses de Votre Excellence conçues en termes analogues à ceux de ces notes soient considérées comme constituant l'accord intervenu en la matière entre le Gouvernement italien, d'une part, et les Gouvernements des deux Puissances, d'autre part, et que cet accord entre en vigueur à partir de la date de la présente note.

Veuillez agréer, etc.

Eric Drummond.

II.

Texte italien. — Italian Text.

Signor Mussolini a Sir E. Drummond.

Ministero
degli Affari Esteri.

Roma, *li 20 luglio 1934 (Anno XII).*

Signor Ambasciatore,

Con nota del 20 corrente, redatta in inglese, Vostra Eccellenza mi ha fatto a nome del Governo di Sua Maestà Britannica la seguente comunicazione :

« Ho l'onore di proporre a Vostra Eccellenza che la linea del confine fra la Libia e il Sudan sia determinata come segue :

» A partire dal punto d'incrocio del 25° meridiano est di Greenwich col 22° parallelo nord, il confine segue la linea del 25° meridiano in direzione sud fino al suo incrocio con il 20° parallelo nord ; da questo punto esso segue il 20° parallelo nord in direzione ovest fino al suo incrocio con il 24° meridioano est di Greenwich ; da questo punto esso segue il 24° meridiano est di Greenwich in direzione sud fino al suo congiungimento con il confine dei possedimento francesi.

» Il Governo di Sua Maestà nel Regno Unito rinuncia a ogni rivendicazione da parte del Sudan relativamente al territorio a ovest e a nord della linea di confine come sopra indicata ; il Governo Italiano, da parte sua, rinuncia a ogni rivendicazione circa il territorio a sud e a est di detta linea di confine.

» Ho notizia che una nota in termini analoghi viene inviata a Vostra Eccellenza dal Ministro Egiziano, e ho l'onore di portare a conoscenza dell'Eccellenza Vostra che la presente nota e la nota egiziana in termini analoghi rappresentano le proposte delle due Potenze per conto del Sudan. Ho pertanto l'onore di proporre che la presente nota e la nota egiziana e le risposte in termini analoghi di Vostra Eccellenza a tali note siano considerate come costituenti i termini dell'accordo raggiunto fra il Governo Italiano da una parte e i Governi delle due Potenze dall'altra sulla questione, e che questo accordo entri in vigore dalla data della presente nota. »

Ho l'onore di dichiarare all'Eccellenza Vostra che il Governo Italiano accetta le proposte della nota di cui sopra.

Voglia gradire, etc.

MUSSOLINI.

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[1] TRADUCTION. — TRANSLATION.

MONSIEUR MUSSOLINI A SIR E. DRUMMOND.

MINISTÈRE
DES AFFAIRES ÉTRANGÈRES.

ROME, *le* 20 *juillet* 1934 — *An XII.*

MONSIEUR L'AMBASSADEUR,

Par votre note du 20 courant, rédigée en anglais, vous avez bien voulu me faire, au nom du Gouvernement de Sa Majesté britannique, la communication suivante :

(Voir N° I).

J'ai l'honneur de vous déclarer que le Gouvernement italien accepte les propositions contenues dans votre note susmentionnée.

Veuillez agréer, etc.

MUSSOLINI.

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[2] TRADUCTION. — TRANSLATION.

SIGNOR MUSSOLINI TO SIR E. DRUMMOND.

MINISTRY
OF FOREIGN AFFAIRS.

ROME, *July 20th,* 1934 *(Year XII).*

M. l'AMBASSADEUR,

In a note of the 20th instant in English your Excellency, in the name of His Britannic Majesty's Government, made me the following communication :

(As in No. I.)

I have the honour to inform your Excellency that the Italian Government accept the proposals in the note referred to above.

Please accept, etc.

MUSSOLINI.

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[1] Traduit par le Secrétariat de la Société des Nations, à titre d'information.

[2] Traduction du Foreign Office de Sa Majesté britannique.

[1] Translated by the Secretariat of the League of Nations, for information.

[2] Translation of His Britannic Majesty's Foreign Office.

III.

Sadek Wahba Pacha à Monsieur Mussolini.

Légation d'Egypte.

Rome, *le* 20 *juillet* 1934.

M. le Président,

J'ai l'honneur de proposer à Votre Excellence que la ligne frontière entre la Libye et le Soudan soit fixée comme suit :

> Partant du point d'intersection du 25e méridien est de Greenwich et du parallèle 22 degrés nord, la ligne frontière suit la ligne du 25e méridien en direction sud jusqu'à son intersection avec le parallèle 20 degrés nord ; de ce point, elle suit le parallèle 20 degrés nord en direction ouest jusqu'à son intersection avec le 24e méridien est de Greenwich ; de ce point, elle suit le 24e méridien est de Greenwich en direction sud jusqu'à sa jonction avec la frontière des possessions françaises.

Le Gouvernement égyptien renonce à toute réclamation de la part du Soudan en ce qui concerne le territoire situé à l'ouest et au nord de la ligne frontière précitée. De sa part, le Gouvernement italien renonce à toute réclamation en ce qui concerne le territoire situé au sud et à l'est de ladite ligne frontière.

Je crois savoir que l'Ambassadeur britannique adresse à Votre Excellence une note conçue dans des termes similaires, et j'ai l'honneur d'informer Votre Excellence que la présente note et la note britannique, conçues dans des termes similaires, représentent les propositions des deux Puissances de la part du Soudan. En conséquence, j'ai l'honneur de proposer que la présente note et la note britannique ainsi que les réponses faites à ces notes par Votre Excellence dans des termes similaires soient considérées comme constituant les termes de

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III.

[1] Traduction. — Translation.

Sadek Wahba Pasha to Signor Mussolini.

Egyptian Legation.

Rome, *July 20th*, 1934.

M. le Président,

I have the honour to suggest to your Excellency that the line of the frontier between Libya and the Sudan be fixed as follows :

> Starting from the point of intersection of the 25th meridian east of Greenwich with parallel 22° north, the line of frontier follows the line of the 25th meridian in a southerly direction as far as its intersection with parallel 20° north ; from this point it follows parallel 20° north in a westerly direction as far as its intersection with the 24th meridian east of Greenwich ; from this point it follows the 24th meridian east of Greenwich in a southerly direction as far as its junction with the frontier of French possessions.

The Egyptian Government renounce all claim on the part of the Sudan in so far as the territory situated to the west and north of the line of frontier set out above is concerned. For their part, the Italian Government renounce all claim as far as territory situated to the south and east of the said line of frontier is concerned.

I understand that the British Ambassador is addressing to your Excellency a note in similar terms, and I have the honour to inform your Excellency that the present note and the British note, which are drafted in similar terms, represent the proposals of the two Powers on behalf of the Sudan. I accordingly have the honour to suggest that the present note and the British note, together with the replies in similar terms made by your Excellency to these notes, be considered as constituting the terms of the agreement reached in this matter

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[1] Traduction du Foreign Office de Sa Majesté britannique.

[1] Translation of His Britannic Majesty's Foreign Office.

l'accord conclu dans cette matière entre le Gouvernement italien, d'une part, et les Gouvernements des deux Puissances, d'autre part, et que cet accord entrera en vigueur à partir de la date de la présente note.

Je saisis, etc.

Sadek Wahba.

between the Italian Government on the one side and the Governments of the two Powers on the other side, and that this agreement shall enter into force as from the date of the present note.

I avail, etc.

Sadek Wahba.

IV.

Texte italien. — Italian Text.

Signor Mussolini to Sadek Wahba Pasha.

Ministero
degli Affari Esteri.

Roma, *li 20 luglio 1934 (Anno XII).*

Signor Ministro,

Con nota del 20 corrente, redatta in francese, V. E. me ha fatto a nome del Governo di Sua Maestà il Re d'Egitto la seguente comunicazione :

« Ho l'onore di proporre a V. E. che la linea del confine fra la Libia e il Sudan sia determinata come segue :

» A partire dal punto d'incrocio del 25° meridiano est di Greenwich col 22° parallelo nord, il confine segue la linea del 25° meridiano in direzione sud fino al suo incrocio con il 20° parallelo nord ; da questo punto esso segue il 20° parallelo nord in direzione ovest fino al suo incrocio con il 24° meridiano est di Greenwich ; da questo punto esso segue il 24° meridiano est di Greenwich in direzione sud fino al suo congiungimento con il confine dei possedimenti francesi.

» Il Governo Egiziano rinuncia a ogni rivendicazione da parte del Sudan relativamente al territorio situato a ovest e a nord della linea di confine sopra indicata. Il Governo Italiano, da parte sua, rinuncia a ogni rivendicazione circa il territorio situato a sud e a est di detta linea di confine.

» Ho notizia che l'Ambasciatore Britannico invia a V. E. una nota redatta in termini analoghi, e ho l'onore di portare a conoscenza dell'E. V. che la presente nota e la nota britannica, redatta in termini analoghi, rappresentano le proposte delle due Potenze per conto del Sudan. Ho pertanto l'onore di proporre che la presente nota e la nota britannica e le risposte in termini analoghi di V. E. a tali note siano considerate come costituenti i termini dell'accordo concluso sulla questione fra il Governo Italiano da una parte e i Governi delle due Potenze dall'altra, e che questo accordo entri in vigore dalla data della presente nota. »

Ho l'onore di dichiarare all'E.V. che il Governo Italiano accetta le proposte della nota di cui sopra.

Voglia gradire, etc.

Mussolini.

[1] TRADUCTION. — TRANSLATION.

M. MUSSOLINI A SADEK WAHBA PACHA.

MINISTÈRE
DES AFFAIRES ÉTRANGÈRES.

ROME, *le 20 juillet 1934 — An XII.*

MONSIEUR LE MINISTRE,

Par votre note en date du 20 courant, rédigée en français, vous avez bien voulu me faire, au nom du Gouvernement de Sa Majesté le Roi d'Egypte, la communication suivante :

(Voir N° III).

J'ai l'honneur de vous déclarer que le Gouvernement italien accepte les propositions contenues dans votre note susmentionnée.

Veuillez agréer, etc.

MUSSOLINI.

[2] TRADUCTION. — TRANSLATION.

SIGNOR MUSSOLINI TO SADEK WAHBA PASHA.

MINISTRY
OF FOREIGN AFFAIRS.

ROME, *July 20th, 1934 (Year XII).*

M. LE MINISTRE,

In a note of the 20th instant in French your Excellency, in the name of His Majesty the King of Egypt, made me the following communication :

(As in No. III.)

I have the honour to inform your Excellency that the Italian Government accepts the proposals in the note referred to above.

Please accept, etc.

MUSSOLINI.

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[1] Traduit par le Secrétariat de la Société des Nations, à titre d'information.

[2] Traduction du Foreign Office de Sa Majesté britannique.

[1] Translated by the Secretariat of the League of Nations, for information.

[2] Translation of His Britannic Majesty's Foreign Office.

Annex 25

TREATY OF ROME BETWEEN FRANCE AND ITALY OF 7 JANUARY 1935

Italie, France. Traité, protocole et déclaration pour le règlement
des intérêts respectifs en Afrique ; signés à Rome, le 7 janvier 1935,
in de Martens, G. F. : *Nouveau recueil général de traités*,
3e série, Vol. XXXVI, Leipzig, Librairie Hans Buske, 1939,
pp. 648-651.

124.

ITALIE, FRANCE.

Traité, Protocole et Déclaration pour le règlement des intérêts respectifs en Afrique; signés à Rome, le 7 janvier 1935.*)

Trattati e Convenzioni fra il Regno d'Italia egli altri Stati. Vol. 49° (1938), p. 18

I.

Sa Majesté le Roi d'Italie et le Président de la République Française, désireux de développer en Afrique les relations d'amitié et de bon voisinage qui existent entre les deux Nations, et, pour ce faire, de régler d'une manière définitive les questions pendantes au sujet des Conventions du 28 septembre 1896 relatives à la Tunisie **) et de l'Accord de Londres du 26 avril 1915 en son Article 13,***) ont désigné pour leurs Plénipotentiaires, savoir:

Sa Majesté le Roi d'Italie

M. **Benito Mussolini**, Chef du Gouvernement, Ministre des Affaires Etrangères, et

le Président de la République Française:

M. **Pierre Laval**, Ministre des Affaires Etrangères,

lesquels, après avoir reconnu leurs pleins pouvoirs en bonne et due forme, sont convenus des dispositions suivantes:

Titre I.

Questions Tunisiennes.

Article 1.

Les situations et les droits des Italiens et sujets coloniaux italiens en Tunisie et des Tunisiens en Italie seront réglés par une Convention spéciale, dont les bases sont fixées dans un Protocole spéciale en date de ce jour, et que les Hautes Parties Contractantes s'engagent à négocier dans le plus bref délai possible, de telle manière qu'elle entre en vigueur à la même date que le présent Traité.

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*) Ratifiés par une loi française du 26 mars 1935 (Journal officiel p. 3470) et par une loi italienne du 18 juin 1935, No. 1167. L'échange des ratifications n'a pas eu lieu. Par une Note remise à l'ambassadeur de France à Rome le Gouvernement Italien a informé le Gouvernement Français que les Accords de 1935 n'étaient plus considérés par lui comme valables. V. Le Temps du 23 décembre 1938.

**) V. N.R.G. 2. s. XXIII, p. 375 et suiv.

***) V. N.R.G. 3. s. X, p. 329.

Titre II.

Frontière entre la Libye et les Colonies françaises limitrophes.

Article 2.

La frontière séparant la Libye de l'Afrique Occidentale Française et de l'Afrique Equatoriale Française à l'est de Tummo, point terminal de la ligne fixée par l'Accord de Paris du 12 septembre 1919 *) sera déterminée ainsi qu'il suit:

une ligne directe partant de Tummo et rejoignant l'Ehi Domar Doba;

de l'Ehi Domar Doba, une ligne droite rejoignant l'extrémité nord-est de l'Ehi Dogologa;

de l'Ehi Dogologa une ligne droite rejoignant l'Enneri Turkou en un point situé en aval du confluent de celui-ci avec l'Enneri Guesso, de telle sorte que le tronçon Dogologa-Enneri-Turkou de la piste caravanière du Fezzan vers Bardai reste en territoire français;

de ce point, une ligne droite rejoignant le confluent de l'Enneri Bardague avec l'Enneri Momogoi ou Ofouni;

de ce confluent, la ligne des hauteurs séparant l'Enneri Bardague de l'Enneri Momogoi ou Ofouni, puis la ligne des crêtes jusqu'à l'Ehi Madou, de telle sorte que les affluents de droite de l'Enneri Bardague-Zoumeri, notamment les Enneri Odri, Tinaa, Ouadame, Araye, Mecheur, Tirenno, Aguesju, Kayaga, Abeche restent en territoire français;

de l'Ehi Madou, une ligne droite rejoignant Yebigue, à 10 kilomètres en amont de Yebbi-Ssouma;

de ce point une ligne droite rejoignant le point géodesique d'Aozi;

de ce point, une ligne droite rejoignant l'intersection du $24^{ème}$ degré de longitude Est Greenwich et du $18^{ème}$ degré 45' de latitude nord.

Ce tracé est indiqué sur la carte n. 1 jointe au présent Traité. **)

Article 3.

Des Commissaires spéciaux, délégués à cet effet par les deux Gouvernements, procéderont sur les lieux, d'après les données énoncées à l'Article précédent, à une démarcation effective. Ils soumettront aux Gouvernements en même temps que le résultat de leurs travaux, un projet d'accord sur les dispositions à prendre pour assurer d'une manière efficace la police dans la zone frontière et pour y régler l'utilisation des pâturages et des points d'eau par les populations indigènes.

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*) V. N.R.G. 3. s. XXI, p. 196.

**) Non pubblicata.

Titre III.

Frontière entre l'Erytrée et la côte française des Somalis.

Article 4.

Le tracé suivant sera substitué à la délimination établie entre l'Erytrée et la Côte Française des Somalis par les Protocoles de Rome en date des 24 janvier 1900 et 10 juillet 1901: *)

de Dor Eloua sur le détroit de Bab el Mandeb une ligne droite rejoignant l'Oued Weima imméditement en aval de Daadato.

Ce tracé est indiqué sur la carte n. 2 jointe au présent Traité.**)

Article 5.

Des Commissaires spéciaux, délégués à cet effet, par les deux Gouvernements, procéderont sur les lieux, d'après les données enoncées à l'Article précédent, à une démarcation effective. Ils soumettront aux deux Gouvernements, en même temps que le résultat de leurs travaux, un projet d'accord sur les dispositions à prendre pour assurer d'une manière efficace la police dans la zone frontière et pour y régler l'utilisation des pâturages et des points d'eau par les populations indigènes.

Article 6.

La France reconnaît la souveraineté de l'Italie sur l'île Doumeirah et les îlots sans nom adjacents à cette île.

Article 7.

Le présent Traité sera ratifié et les ratifications seront échangées à Rome dans le plus bref délai possible. Il entrera en vigueur le jour de l'échange des ratifications.

En foi de quoi, les Plénipotentiaires susnommés ont signé le présent Traité, établi en double exemplaire, et y ont apposé leur cachets.

Fait à Rome, le 7 janvier 1935.

Mussolini.
Pierre Laval.

II.

Les deux Gouvernements sont d'accord sur les bases suivantes:

1. La Convention visée à l'Article 1er du Traité relatif au règlement des intérêts de la France et de l'Italie en Afrique en date de ce jour sera basée sur le maintien jusqu'au au 28 mars 1945 des conventions et documents annexes actuellement en vigueur. Le retour au droit commun, à partir du 28 mars 1945 devra se faire progressivement.

2. En ce qui concerne la nationalité, ladite Convention prévoira que les individus nés en Tunisie de parents italiens avant le 28 mars 1945

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*) V. N.R.G. 3. s. II, p. 830, 831.
**) Non pubblicata.

seront de nationalité italienne: les individus nés en Tunisie de parents italiens entre le 28 mars 1945 et le 27 mars 1965 seront de nationalité italienne mais pourront, dans l'année qui suivra leur majorité, réclamer la nationalité française; ils pourront, avec l'assistance de leurs tuteurs légaux, réclamer cette nationalité dès l'âge de 16 ans; à partir du 28 mars 1965, tous les individus nés en Tunisie de parents italiens seront soumis à la législation sur la nationalité française en Tunisie.

3. En ce qui concerne les écoles royales italiennes en Tunisie, la Convention prévoira leur maintien jusqu'au 28 mars 1955, date à laquelle elles deviendront des écoles privées soumises à la législation scolaire française en Tunisie. Il est entendu que ladite législation ne pourra pas dans l'avenir aggraver la situation des écoles privées italiennes telle que elles résulterait de l'application de la législation actuelle, et que les autorisations administratives pour la survivance des écoles royales après leur transformation seront accordées en temps voulu pour que leur activité ne souffre pas d'interruption.

4. Les Italiens qui antérieurement au 28 mars 1945, auront été admis à excercer des professions liberales en Tunisie, notamment celles d'avocat, de médecin, de pharmacien, de sage-femme, d'architecte, seront assurés, quelque soit le régime établi par l'application du paragraphe 1er, de pouvoir continuer leur vie durant à exercer ces professions.

Rome, le 7 janvier 1935.

Mussolini.
Pierre Laval.

III.

Le Ministre des Affaires Etrangères de la République Française et le Chef du Gouvernement Italien:

Considérant que les Conventions en date de ce jour, ont assuré le règlement des principales questions que les accords antérieurs laissaient pendantes entre eux, et notamment de toutes questions relatives à l'application de l'Art. 13 de l'Accord de Londres du 26 avril 1915;

Considérant que les questions litigieuses qui pourraient surgir à l'avenir entre leurs Gouvernements trouveront leur issue soit par la voie des pourparlers diplomatiques, soit par les procédures établies par le Pacte de la Société des Nations, le Statut de la Cour Permanente de Justice Internationale et l'Acte générale d'Arbitrage;

Déclarent la détermination de leurs Gouvernements de développer l'amitié traditionnelle qui unit les deux Nations et de collaborer, dans un esprit de mutuelle confiance, au maintien de la paix générale.

En vue de cette collaboration, ils procéderont entre eux à toutes les consultations qu'exigeraient les circonstances.

Fait en double exemplaire, à Rome, le 7 janvier 1935.

Laval.
Mussolini.

Annex 26

TREATY OF PEACE WITH ITALY, SIGNED AT PARIS ON 10 FEBRUARY 1947 (INCLUDING ANNEX XI)

United Nations: *Treaty Series*, No. 747, Vol. 49, 1950,
pp. 1-56, 102-103, 126-171 and 214-215.

No. 747

UNION OF SOVIET SOCIALIST REPUBLICS, UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, UNITED STATES OF AMERICA, FRANCE, AUSTRALIA, etc.

Treaty of Peace with Italy. Signed at Paris, on 10 February 1947

Official texts: French, English, Russian and Italian. (French, English and Russian texts are authentic.)

Registered by the Union of Soviet Socialist Republics and France on 15 March 1950.

UNION DES REPUBLIQUES SOCIALISTES SOVIETIQUES, ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD, ETATS-UNIS D'AMERIQUE, FRANCE, AUSTRALIE, etc.

Traité de paix avec l'Italie. Signé à Paris, le 10 février 1947

Textes officiels français, anglais, russe et italien. (Les textes français, anglais et russe font foi.)

Enregistré par l'Union des Républiques socialistes soviétiques et la France le 15 mars 1950.

Nº 747. TRAITE[1] DE PAIX AVEC L'ITALIE. SIGNE A PARIS, LE 10 FEVRIER 1947

Les Etats-Unis d'Amérique, la Chine, la France, le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, l'Union des Républiques Soviétiques Socialistes, l'Australie, la Belgique, la République Soviétique Socialiste de Biélorussie, le Brésil, le Canada, l'Ethiopie, la Grèce, l'Inde, la Nouvelle-Zélande, les Pays-Bas, la Pologne, la Tchéchoslovaquie, la République Soviétique Socialiste d'Ukraine, l'Union Sud-Africaine, la République Fédérative Populaire de Yougoslavie, désignés ci-après sous le nom de "Puissances Alliées et Associées", d'une part,

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[1] Entré en vigueur le 15 septembre 1947 par le dépôt auprès du Gouvernement de la République française des instruments de ratification par l'Union des Républiques socialistes soviétiques, le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, les Etats-Unis d'Amérique et la France, conformément aux dispositions de l'article 90.

Liste des Etats qui ont déposé des instruments de ratification ou d'accession auprès du Gouvernement de la République française et dates du dépôt de ces instruments:

Etats-Unis d'Amérique	15 septembre	1947	Ratification
France	15 septembre	1947	Ratification
Royaume-Uni	15 septembre	1947	Ratification
U.R.S.S.	15 septembre	1947	Ratification
Yougoslavie*	15 septembre	1947	Ratification
Italie	15 septembre	1947	Ratification
Inde**	15 septembre	1947	Ratification
Canada	15 septembre	1947	Ratification
Tchécoslovaquie	14 octobre	1947	Ratification
Albanie	20 octobre	1947	Accession
Grèce	28 octobre	1947	Ratification
Union Sud-Africaine	4 novembre	1947	Ratification
Ethiopie	6 novembre	1947	Ratification
Chine	24 novembre	1947	Ratification
Nouvelle-Zélande	24 décembre	1947	Ratification
Pologne	4 février	1948	Ratification
Mexique	10 avril	1948	Accession
Australie	9 juillet	1948	Ratification
Belgique	4 septembre	1948	Ratification
Brésil	4 janvier	1949	Ratification
Pays-Bas	7 février	1949	Ratification

* La Yougoslavie a déposé ses instruments de ratification le 4 septembre 1947.

** Le Gouvernement du Pakistan a fait savoir au Gouvernement français qu'il considérait la ratification déposée par le Gouvernement indien comme engageant son pays.

et l'Italie d'autre part;

Considérant que l'Italie, sous le régime fasciste, est devenue l'une des parties contractantes du pacte tripartite avec l'Allemagne et le Japon, qu'elle a entrepris une guerre d'agression et, de ce fait, a provoqué un état de guerre avec toutes les Puissances Alliées et Associées et avec d'autres Nations Unies, et qu'elle porte sa part de responsabilité dans la guerre;

Considérant que, par suite des victoires des forces alliées et avec l'aide des éléments démocratiques du peuple italien, le régime fasciste a été renversé en Italie le 25 juillet 1943, et que l'Italie, après avoir capitulé sans conditions, a signé les clauses d'armistice des 3 et 29 septembre de la même année;

Considérant que, après ledit armistice, des forces armées italiennes, celles du Gouvernement aussi bien que celles de la Résistance, ont pris une part active à la guerre contre l'Allemagne, que l'Italie a déclaré la guerre à l'Allemagne le 13 octobre 1943 et qu'elle est ainsi devenue cobelligérante dans la guerre contre l'Allemagne;

Considérant que les Puissances Alliées et Associées et l'Italie sont désireuses de conclure un traité de paix qui règle, en conformité avec les principes de justice, les questions demeurant en suspens à la suite des événements ci-dessus rappelés et qui forme la base de relations amicales entre elles, permettant ainsi aux Puissances Alliées et Associées d'appuyer les demandes que l'Italie présentera pour devenir membre de l'Organisation des Nations Unies et pour adhérer à toute convention conclue sous les auspices des Nations Unies;

Pour ces motifs, ont décidé de proclamer la cessation de l'état de guerre et de conclure à cet effet le présent Traité de Paix et ont, à ces fins, désigné les Plénipotentiaires soussignés, lesquels, après présentation de leurs pleins pouvoirs, reconnus en bonne et due forme, sont convenus des articles suivants:

PARTIE I

CLAUSES TERRITORIALES

SECTION I—FRONTIÈRES

Article 1

Les frontières de l'Italie demeureront telles qu'elles étaient au 1er janvier 1938, sous réserve des modifications indiquées aux articles 2, 3, 4, 11 et 22. Le tracé de ces frontières est indiqué sur les cartes[1] jointes au présent Traité (annexe I). En cas de divergences entre le texte de la description des frontières et les cartes, c'est le texte qui fera foi.

Article 2

La frontière entre l'Italie et la France, telle qu'elle était au 1er janvier 1938, sera modifiée comme suit:

1. *Col du Petit-Saint-Bernard*

La nouvelle frontière suivra la ligne de partage des eaux en quittant la frontière actuelle à 2 kilomètres environ au nord-ouest de l'Hospice, coupant la route à 1 kilomètre environ au nord-est de l'Hospice et rejoignant la frontière actuelle à 2 kilomètres environ au sud-est de l'Hospice.

2. *Plateau du Mont Cenis*

La nouvelle frontière quittera la frontière actuelle à 3 kilomètres environ au nord-ouest du sommet de Rochemelon, coupera la route à 4 kilomètres environ au sud-est de l'Hospice et rejoindra la frontière actuelle à 4 kilomètres environ au nord-est du Mont d'Ambin.

3. *Mont Thabor-Chaberton*

(a) Dans le région du Mont Thabor, la nouvelle frontière quittera la frontière actuelle à 5 kilomètres environ à l'est du Mont Thabor et se dirigera vers le sud-est pour rejoindre la frontière actuelle à 3 kilomètres environ à l'ouest de la Pointe de Charra.

(b) Dans la région du Chaberton, la nouvelle frontière quittera la frontière actuelle à 3 kilomètres environ au nord-nord-ouest du Chaberton qu'elle contournera à l'est, et coupera la route à 1 kilomètre environ de la

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[1] Nations Unies, *Recueil des Traités*, volume 50.

frontière actuelle qu'elle rejoindra à 2 kilomètres environ au sud-est de la localité de Montgenèvre.

4. *Vallées supérieures de la Tinée, de la Vésubie et de la Roya*

La nouvelle frontière quittera la frontière actuelle à Colla Longa, suivra la ligne de partage des eaux par le Mont Clapier, le Col de Tende et le Mont Marguareis, d'où elle descendra vers le sud par le Mont Saccarello, le Mont Vacchi, le Mont Pietravecchia, le Mont Lega et atteindra un point situé approximativement à 100 mètres de la frontière actuelle près de Colla Pegairolle à 5 kilomètres environ au nord-est du Breil; de là, en direction du sud-ouest, elle rejoindra la frontière actuelle à 100 mètres environ au sud-ouest du Mont Mergo.

La description détaillée des sections de la frontière auxquelles s'appliquent les modifications indiquées dans les paragraphes 1, 2, 3 et 4 ci-dessus, figure à l'annexe II du présent traité, les cartes auxquelles se réfère cette description se trouvant à l'annexe I.

Article 3

La frontière entre l'Italie et la Yougoslavie sera déterminée comme il suit:

La nouvelle frontière suit une ligne partant du point de jonction des frontières de l'Autriche, de l'Italie et de la Yougoslavie, telles qu'elles étaient au 1er janvier 1938, et suivant vers le sud la frontière de 1938 entre la Yougoslavie et l'Italie jusqu'au point de jonction de cette frontière et de la limite administrative séparant les provinces italiennes du Frioul (Udine) et de Gorizia;

de ce point, la ligne se confond avec ladite limite administrative, jusqu'en un point situé approximativement à 0,5 Km au nord du village de Mernico dans la vallée de l'Iudrio.

laissant en ce point la limite administrative séparant les provinces italiennes du Frioul et de Gorizia, la ligne s'étend à l'est jusqu'en un point situé approximativement à 0,5 Km à l'ouest du village de Vercoglia di Cosbana et de là se dirige vers le sud, entre les vallées du Quarnizzo et de la Cosbana, jusqu'en un point situé approximativement à 1 Km au sud-ouest du village de Fleana, après s'être incurvée de manière à couper la rivière de Recca en un point situé approximativement à 1,5 Km à l'est de l'Iudrio, laissant à l'est la route de Cosbana via Nebola à Castel Dobra;

de là, la ligne continue vers le sud-est, passant immédiatement au sud de la route entre les cotes 111 et 172, puis au sud de celle de Vipulzano à Uclanzi par les cotes 57 et 122, coupant cette dernière route à 100 m. environ à l'est de la cote 122 pour s'infléchir vers le nord en direction d'un point situé à 350 m. au sud-est de la cote 266;

passant à 0,5 Km environ au nord du village de San Floriano, la ligne s'étend alors vers l'est jusqu'au Mont Sabotino (cote 610), laissant au nord le village de Poggio San Valentino;

du Mont Sabotino, la ligne, se dirigeant vers le sud, traverse l'Isonzo (Soca) à la hauteur de la ville de Salcano, qu'elle laisse en territoire yougoslave; elle longe alors immédiatement à l'ouest la ligne de chemin de fer de Canale d'Isonzo à Montespino jusqu'en un point situé à environ 750 m. au sud de la route de Gorizia à Aisovizza;

se détachant alors du chemin de fer, elle s'infléchit en direction du sud-ouest, laissant en territoire yougoslave la ville de San Pietro et en territoire italien l'Hospice et la route qui le borde, traverse à 700 mètres environ de la station de Gorizia S. Marco la ligne de raccordement entre le chemin de fer précité et celui de Sagrado à Cormons, longe le cimetière de Gorizia, laissé en territoire italien, passe entre la grand'route N° 55 de Gorizia à Trieste, laissée en territoire italien, et le carrefour situé à la cote 54, laissant en territoire yougoslave les villes de Vertoiba et de Merna et atteint un point situé approximativement à la cote 49;

de là, la ligne continue en direction du sud à travers le Carso à 1 Km environ à l'est de la grand'route N° 55, laissant à l'est le village d'Opacchiasella et à l'ouest le village d'Iamiano;

d'un point situé approximativement à 1 Km à l'est d'Iamiano, la ligne suit la limite administrative séparant les provinces de Gorizia et de Trieste jusqu'en un point situé approximativement à 2 Km au nord-est du village de San Giovanni et à environ 0,5 Km au nord-ouest de la cote 208, et qui constitue le point commun aux frontières de la Yougoslavie, de l'Italie et du Territoire Libre de Trieste.

La carte à laquelle se réfère cette description figure à l'annexe I.

Article 4

La frontière entre l'Italie et le Territoire Libre de Trieste sera fixée comme il suit:

La nouvelle frontière part d'un point situé sur la limite administrative séparant les provinces de Gorizia et de Trieste à environ 2 Km au nord-est du village de San Giovanni et à environ 0,5 Km au nord-ouest de la cote 208, et qui constitue le point commun aux frontières de la Yougoslavie, de l'Italie et du Territoire Libre de Trieste, et se dirige vers le sud-ouest jusqu'en un point adjacent à la grand'route N° 14 et situé approximativement à 1 Km au nord-ouest de la jonction des grand'routes N^{os} 55 et 14 qui vont de Gorizia et de Monfalcone, respectivement, à Trieste;

de là, la ligne se dirige vers le sud jusqu'en un point situé sur le golfe de Panzano, à égale distance de Punta Sdobba, à l'embouchure de l'Isonzo (Soca), et de Castello Vecchio à Duino, à 3,3 Km environ au sud du point où elle quitte la côte, point situé approximativement à 2 Km au nord-ouest de la ville de Duino;

de là, la ligne rejoint la haute mer en passant à égale distance de la côte italienne et de la côte du Territoire Libre de Trieste.

La carte à laquelle se réfère cette description figure à l'annexe I.

Article 5

1. La démarcation finale des nouvelles frontières fixés par les articles 2, 3, 4 et 22 du présent Traité sera déterminée sur place par des Commissions de délimitation composées de représentants des deux Gouvernements intéressés.

2. Ces Commissions commenceront leurs travaux immédiatement après l'entrée en vigueur du présent Traité; elles les termineront le plus tôt possible et, en tout cas, dans un délai de six mois.

3. Toutes les questions sur lesquelles l'accord n'aura pas été réalisé par ces Commissions seront soumises aux Ambassadeurs des Etats-Unis d'Amérique, de France, du Royaume-Uni et de l'Union Soviétique à Rome, qui, agissant suivant la procédure prévue à l'article 86, en assureront le règlement final par telle méthode de leur choix, y compris, s'il y a lieu, la nomination d'un troisième Commissaire impartial.

4. Les dépenses des Commissions de délimitation seront supportées par moitié par chacun des deux Gouvernements intéressés.

5. En vue de la détermination finale sur place des frontières établies aux articles 3, 4 et 22, les Commissaires seront autorisés à s'écarter de

0,5 Km de la ligne établie par le présent Traité, afin d'adapter la frontière aux conditions géographiques et économiques locales, sous réserve de ne placer sous une souveraineté autre que celle résultant des délimitations stipulées dans le présent Traité aucun village ni aucune ville de plus de 500 habitants, aucune route ou voie ferrée importante, ni aucun centre important d'approvisionnement en eau ou de fourniture d'énergie électrique.

SECTION II—FRANCE (Clauses Spéciales)

Article 6

L'Italie cède à la France en pleine souveraineté le territoire précédemment italien situé du côté français de la frontière franco-italienne, telle qu'elle est définie à l'article 2.

Article 7

Le Gouvernement italien remettra au Gouvernement français toutes les archives historiques et administratives antérieures à 1860 qui se rapportent au territoire cédé à la France par le Traité du 24 mars 1860[1] et par la Convention du 23 août 1860[2].

Article 8

1. Le Gouvernement italien coopérera avec le Gouvernement français à l'établissement éventuel d'une liaison par voie ferrée entre Briançon et Modane par Bardonnèche.

2. Le Gouvernement italien autorisera en franchise, sans visite de douane, sans vérification de passeports ou aucune autre formalité, le trafic par chemin de fer des voyageurs et des marchandises empruntant, en territoire italien, le raccordement ainsi établi, pour se rendre dans un sens ou dans l'autre d'un point situé en France à un autre point situé en France; il prendra toute mesure nécessaire pour assurer le passage, dans les mêmes conditions de franchise et sans retard injustifié, des trains français utilisant ledit raccordement.

3. Les arrangements nécessaires seront conclus en temps utile entre les deux Gouvernements.

Article 9

1. *Plateau du Mont Cenis*

En vue d'assurer à l'Italie des facilités identiques à celles dont elle disposait pour l'énergie hydro-électrique et l'eau fournies par le lac du

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[1] De Martens, *Nouveau Recueil général de Traités*, tome XVI, partie II, page 539.

[2] De Martens, *Nouveau Recueil général de Traités*, tome XVII, partie II, page 22.

Mont Cenis avant la cession de cette région à la France, l'Italie recevra de la France par voie d'accord bilatéral les garanties techniques indiquées dans l'annexe III.

2. *Région de Tende-La Brigue*

Afin que l'Italie n'ait à subir aucune diminution des fournitures d'énergie électrique qu'elle recevait de sources existant dans la région de Tende-La Brigue avant la cession de cette région à la France, l'Italie recevra de la France par voie d'accord bilatéral les garanties techniques indiquées à l'annexe III.

SECTION III—AUTRICHE (Clauses Spéciales)

Article 10

1. L'Italie conclura avec l'Autriche des accords pour assurer la liberté de circulation des voyageurs et des marchandises entre le nord et l'est du Tyrol ou confirmera les accords existant à ce sujet.

2. Les Puissances Alliées et Associées ont pris note des dispositions (dont le texte est contenu dans l'annexe IV), sur lesquelles les Gouvernements autrichien et italien se sont mis d'accord le 5 septembre 1946.

SECTION IV—RÉPUBLIQUE FÉDÉRATIVE POPULAIRE DE YOUGOSLAVIE (Clauses Spéciales)

Article 11

1. L'Italie cède à la Yougoslavie, en pleine souveraineté, le territoire situé entre les nouvelles frontières de la Yougoslavie telles qu'elles sont définies aux articles 3 et 22 et la frontière italo-yougoslave telle qu'elle existait au 1er janvier 1938 ainsi que la commune de Zara et toutes les îles et les îlots adjacents compris dans les zones suivantes:

(a) Région limitée:

au nord par le parallèle 42°50′N.

au sud par le parallèle 42°42′N.

à l'est par le méridien 17°10′E.

à l'ouest par le méridien 16°25′E.

(b) Région limitée:

au nord par une ligne traversant Porto del Quieto en restant à égale distance de la côte du Territoire Libre de Trieste et de celle de la Yougoslavie et, de là, gagnant le point 45°15'N.—13°24'E.

au sud par le parallèle 44°23'N.

à l'ouest par une ligne joignant les points suivants:

1) 45°15'N.–13°24'E.

2) 44°51'N. – 13°37'E.

3) 44°23'N.–14°18'30"E.

à l'est par la côte occidentale de l'Istrie, les îles et le territoire continental de la Yougoslavie.

La carte de ces régions figure à l'annexe I.

2. L'Italie cède à la Yougoslavie en pleine souveraineté l'île de Pelagosa et les îlots adjacents.

L'île de Pelagosa restera démilitarisée.

A Pelagosa et dans les eaux avoisinantes, les pêcheurs italiens jouiront des mêmes droits que ceux qui y étaient reconnus aux pêcheurs yougoslaves avant le 6 avril 1941.

Article 12

1. L'Italie restituera à la Yougoslavie tous les objets de caractère artistique, historique, scientifique, pédagogique ou religieux (y compris tous actes, manuscrits, documents et matériel bibliographique) ainsi que les archives administratives (dossiers, registres, plans et documents de toute espèce) qui ont été emportés, entre le 4 novembre 1918 et le 2 mars 1924, à la faveur de l'occupation italienne, hors des territoires rattachés à la Yougoslavie aux termes des traités signés à Rapallo le 12 novembre 1920[1] et à Rome le 27 janvier 1924[2]. L'Italie restituera également les objets de même nature provenant desdits territoires et qui ont été enlevés par la Mission italienne d'armistice siégeant à Vienne après la première guerre mondiale.

2. L'Italie remettra à la Yougoslavie tous les objets visés au paragraphe 1 du présent article et qui sont juridiquement des biens publics, enlevés

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[1] Société des Nations, *Recueil des Traités*, volume XVIII, page 387.

[2] Société des Nations, *Recueil des Traités*, volume XXIV, page 31.

depuis le 4 Novembre 1918 du territoire rattaché à la Yougoslavie aux termes du présent traité, ainsi que les objets intéressant ledit territoire remis à l'Italie par l'Autriche et la Hongrie en exécution des traités de paix signés à Saint-Germain le 10 septembre 1919 et à Trianon le 4 juin 1920 et de la Convention entre l'Autriche et l'Italie signée à Vienne le 4 mai 1920[1].

3. Si, dans des cas particuliers, il est impossible à l'Italie de restituer à la Yougoslavie les objets définis aux paragraphes 1 et 2 du présent article, l'Italie s'engage à remettre à la Yougoslavie des objets de même nature ou d'une importance sensiblement équivalente à celle des objets enlevés, dans la mesure où il est possible de s'en procurer en Italie.

Article 13

L'alimentation en eau de la commune de Gorizia et de ses environs sera réglée conformément aux dispositions de l'annexe V.

SECTION V—GRÈCE (Clauses Spéciales)

Article 14

1. L'Italie cède à la Grèce en pleine souveraineté les îles du Dodécanèse ci-après énumérées, savoir: Stampalia (Astropalia), Rhodes (Rhodos), Calki (Kharki), Scarpanto, Casos (Casso), Piscopis (Tilos), Misiros (Nisyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi), Cos (Kos) et Castellorizo, ainsi que les îlots adjacents.

2. Ces îles seront et resteront démilitarisées.

3. Les formalités et les conditions techniques du transfert de ces îles à la Grèce seront fixées par un accord entre les Gouvernements du Royaume-Uni et de la Grèce et des arrangements seront pris pour que le retrait des troupes étrangères soit terminé au plus tard quatre-vingt-dix jours après l'entrée en vigueur du présent Traité.

PARTIE II

CLAUSES POLITIQUES

SECTION I—CLAUSES GÉNÉRALES

Article 15

L'Italie prendra toutes les mesures nécessaires pour assurer à toutes les personnes relevant de sa juridiction, sans distinction de race, de sexe, de langue ou de religion, la jouissance des droits de l'homme et des libertés fondamentales, y compris la liberté d'expression de la pensée, la liberté de presse et de publication, la liberté du culte, la liberté d'opinion et de réunion.

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[1] De Martens, *Nouveau Recueil général de Traités*, troisième série, tome XIX, page 682.

Article 16

L'Italie ne persécutera ni n'inquiétera les ressortissants italiens, notamment les membres des forces armées, pour le seul fait d'avoir, au cours de la période comprise entre le 10 juin 1940 et la date d'entrée en vigueur du présent Traité, exprimé leur sympathie envers la cause des Puissances Alliées et Associées ou d'avoir mené une action en faveur de cette cause.

Article 17

L'Italie qui, conformément à l'article 30 de la Convention d'Armistice, a pris des mesures pour dissoudre les organisations fascistes en Italie, s'engage à ne pas tolérer la reconstitution sur son territoire d'organisations de cette nature, ayant un caractère politique, militaire ou paramilitaire, et dont le but est de priver le peuple de ses droits démocratiques.

Article 18

L'Italie s'engage à reconnaître la pleine valeur des Traités de Paix avec la Roumanie, la Bulgarie, la Hongrie et la Finlande, ainsi que des autres accords ou arrangements qui ont été conclus ou qui seront conclus par les Puissances Alliées et Associées en ce qui concerne l'Autriche, l'Allemagne et le Japon, en vue du rétablissement de la paix.

SECTION II—NATIONALITÉ

DROITS CIVILS ET POLITIQUES

Article 19

1. Les ressortissants italiens qui étaient domiciliés, à la date du 10 juin 1940, dans un territoire cédé par l'Italie à un autre Etat aux termes du présent Traité, et leurs enfants nés après cette date, deviendront, sous réserve des dispositions du paragraphe suivant, ressortissants de l'Etat auquel le territoire est cédé et jouiront de la pleine capacité civile et politique, conformément à la législation que l'Etat successeur promulguera à cet effet dans les trois mois qui suivront l'entrée en vigueur du présent

Traité. L'acquisition de la nationalité de l'Etat intéressé entraînera la perte de la nationalité italienne.

2. Le Gouvernement de l'Etat auquel le territoire est cédé, prendra, dans les trois mois suivant l'entrée en vigueur du présent Traité, les mesures législatives appropriées pour donner à toutes les personnes mentionnées au paragraphe 1 qui sont âgées de plus de dix-huit ans (ou aux personnes mariées, qu'elles aient ou non atteint cet âge) dont la langue usuelle est l'italien, le droit d'opter pour la nationalité italienne dans un délai d'un an à partir de l'entrée en vigueur du présent Traité. Toute personne ayant ainsi opté conservera la nationalité italienne et ne sera pas considérée comme ayant acquis la nationalité de l'Etat auquel le territoire est cédé. L'option du mari n'entraînera pas celle de la femme. L'option du père ou, si le père est décédé, l'option de la mère entraînera automatiquement celle de tous les enfants non mariés âgés de moins de dix-huit ans.

3. L'Etat auquel le territoire est cédé pourra exiger des personnes qui exerceront leur droit d'option qu'elles transfèrent leur résidence en Italie dans le délai d'un an à compter de la date où l'option aura été exercée.

4. L'Etat auquel le territoire est cédé assurera, conformément à ses lois fondamentales, à toutes personnes se trouvant sur ce territoire, sans distinction de race, de sexe, de langue ou de religion, la jouissance des droits de l'homme et des libertés fondamentales, y compris la liberté d'expression de la pensée, la liberté de presse et de publication, la liberté du culte, la liberté d'opinion et de réunion.

Article 20

1. Dans un délai d'un an à partir de l'entrée en vigueur du présent Traité, les citoyens italiens âgés de plus de dix-huit ans (ou les personnes mariées, qu'elles aient ou non atteint cet âge) dont la langue usuelle est une des langues yougoslaves (serbe, croate ou slovène) et dont le domicile se trouve en territoire italien, pourront obtenir la nationalité yougoslave, si les autorités yougoslaves acceptent la demande qu'ils devront présenter au représentant diplomatique ou consulaire de Yougoslavie en Italie.

2. Dans ce cas, le Gouvernement yougoslave transmettra au Gouvernement italien, par la voie diplomatique, les listes des personnes qui auront ainsi acquis la nationalité yougoslave. Les personnes mentionnées dans ces

listes perdront la nationalité italienne à dater de cette communication officielle.

3. Le Gouvernement italien pourra exiger de ces personnes qu'elles transfèrent leur résidence en Yougoslavie dans le délai d'un an à compter de la date de ladite communication officielle.

4. Les règles relatives à l'effet des options sur les femmes et sur les enfants, stipulées au paragraphe 2 de l'article 19, s'appliqueront aux personnes visées au présent article.

5. Les dispositions de l'annexe XIV paragraphe 10 du présent Traité, visant le transfert des biens des personnes qui optent pour la nationalité italienne, sont également applicables au transfert des biens des personnes qui optent pour la nationalité yougoslave dans les conditions prévues par le présent article.

SECTION III—TERRITOIRE LIBRE DE TRIESTE

Article 21

1. En vertu du présent article se trouve constitué le Territoire Libre de Trieste, dont l'étendue est limitée par la mer Adriatique et les frontières définies aux articles 4 et 22 du présent Traité. Le Territoire Libre de Trieste est reconnu par les Puissances Alliées et Associées et par l'Italie qui conviennent que son intégrité et son indépendance seront assurées par le Conseil de Sécurité des Nations Unies.

2. La souveraineté de l'Italie sur la zone constituant le Territoire Libre de Trieste, tel qu'il est défini au paragraphe 1 du présent article, prendra fin dès l'entrée en vigueur du présent Traité.

3. Dès que la souveraineté de l'Italie sur la zone en question aura pris fin, le Territoire Libre de Trieste sera administré, conformément aux dispositions d'un Instrument relatif au régime provisoire, établi par le Conseil des Ministres des Affaires Etrangères et approuvé par le Conseil de Sécurité. Cet Instrument demeurera en vigueur jusqu'à la date que le Conseil de Sécurité fixera pour l'entrée en vigueur du Statut Permanent qui devra avoir été approuvé par lui. A partir de cette date, le Territoire Libre sera régi par les dispositions de ce Statut Permanent. Les textes du Statut Permanent et de l'Instrument relatif au régime provisoire figurent aux annexes VI et VII.

4. Le Territoire Libre de Trieste ne sera pas considéré comme territoire cédé, au sens de l'article 19 et de l'annexe XIV du présent Traité.

5. L'Italie et la Yougoslavie s'engagent à donner au Territoire Libre de Trieste les garanties indiquées à l'annexe IX.

Article 22

La frontière entre la Yougoslavie et le Territoire Libre de Trieste sera fixée comme il suit:

1. La nouvelle frontière part d'un point situé sur la limite administrative séparant les provinces de Gorizia et de Trieste, à environ 2 Km au nord-est du village de San Giovanni et à environ 0,5 Km au nord-ouest de la cote 208 et qui constitue le point commun aux frontières de la Yougoslavie, de l'Italie et du Territoire Libre de Trieste; elle suit cette limite administrative jusqu'au mont Lanaro (cote 546) et de là, en direction du sud-est, jusqu'au mont Cocusso (cote 672), par la cote 461, Meducia (cote 475), Monte dei Pini (cote 476) et la cote 407 coupant la grand'route No 58 de Trieste à Sesana, à 3,3 Km environ au sud-ouest de cette ville en laissant à l'est les villages de Vogliano et d'Orle et approximativement à 0,4 Km à l'ouest, le village de Zolla.

2. Du mont Cocusso, la ligne continue en direction du sud-est, en laissant le village de Grozzana à l'ouest, atteint le mont Goli (cote 621) et de là, prenant la direction sud-ouest, coupe la route de Trieste à Cosina à la cote 455 et le chemin de fer à la cote 485, passe par les cotes 416 et 326, laissant en Yougoslavie les villages de Beca et de Castel, coupe la route d'Ospo à Gabrovizza d'Istria à 100 mètres environ au sud-est d'Ospo; de là, la ligne franchit la rivière Risana et coupe la route de Villa Decani à Risano en un point situé à 350 mètres environ à l'ouest de Risano, laissant en Yougoslavie le village de Rosario et la route de Risano à San Sergio; de là la ligne rejoint le croisement de routes situé à 1 Km environ au nord-est de la cote 362, en passant par les cotes 285 et 354.

3. De là la ligne rejoint un point situé approximativement à 0,5 Km à l'est du village de Cernova, franchissant la rivière Dragogna à 1 Km environ au nord de ce village, laissant à l'ouest les villages de Bucciai et de Truscolo et à l'est le village de Tersecco, et de là se dirige vers le sud-ouest, au sud-est de la route qui relie les villages de Cernova et de

Chervoi, quittant cette route à 0,8 Km à l'est du village de Cucciani, et de là, dans la direction générale sud-sud-ouest, passant environ à 0,4 Km à l'est du mont Braico et approximativement à 0,4 Km l'ouest du village de Sterna Filaria, laissant à l'est la route qui relie ce village à Piemonte, passant à 0,4 Km environ à l'ouest de la ville de Piemonte et à 0,5 Km environ à l'est de la ville de Castagna et atteignant la rivière Quieto en un point situé approximativement à 1,6 Km au sud-ouest de la ville de Castagna.

4. De là la ligne suit le chenal principal rectifié du Quieto jusqu'à l'embouchure de cette rivière et, à travers Porto del Quieto, atteint la haute mer en restant à égale distance de la côte du Territoire Libre de Trieste et de celle de la Yougoslavie.

La carte à laquelle se réfère cette description figure à l'annexe I.

SECTION IV—COLONIES ITALIENNES

Article 23

1. L'Italie renonce à tous droits et titres sur les possessions territoriales italiennes en Afrique, c'est-à-dire la Libye, l'Erythrée et la Somalie italienne.

2. Lesdites possessions demeureront sous leur administration actuelle jusqu'à ce que leur sort définitif soit réglé.

3. Le sort définitif de ces possessions sera déterminé d'un commun accord par les Gouvernements des Etats-Unis d'Amérique, de la France, du Royaume-Uni, et de l'Union Soviétique, dans un délai d'un an à partir de l'entrée en vigueur du présent Traité et selon les termes de la déclaration commune faite par ces Gouvernements le 10 février 1947 et dont le texte est reproduit dans l'annexe XI.

SECTION V—INTÉRÊTS SPÉCIAUX DE LA CHINE

Article 24

L'Italie renonce en faveur de la Chine à tous les privilèges et avantages résultant des dispositions du protocole final signé à Pékin le 7 septembre 1901[1], ensemble tous annexes, notes et documents complémentaires et elle accepte l'abrogation, en ce qui la concerne, desdits protocole, annexes, notes et documents. L'Italie renonce également à toute demande d'indemnité de ce fait.

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[1] De Martens, *Nouveau Recueil général de Traités*, deuxième série, tome XXXII, page 94.

Article 25

L'Italie accepte l'annulation du contrat obtenu du Gouvernement chinois, en vertu duquel la concession italienne de Tientsin a été accordée, et accepte de remettre au Gouvernement chinois tous biens et archives appartenant à la municipalité de ladite concession.

Article 26

L'Italie renonce en faveur de la Chine aux droits qui lui ont été accordés relativement aux concessions internationales de Changhai et d'Amoy et accepte de remettre au Gouvernement chinois l'administration et le contrôle desdites concessions.

SECTION VI—ALBANIE

Article 27

L'Italie reconnaît et s'engage à respecter la souveraineté et l'indépendance de l'Etat albanais.

Article 28

L'Italie reconnaît que l'île de Saseno fait partie du territoire de l'Albanie et renonce à toutes revendications sur cette île.

Article 29

L'Italie renonce formellement en faveur de l'Albanie à tous biens, (à l'exception des immeubles normalement occupés par les missions diplomatiques ou consulaires), à tous droits, concessions, intérêts et avantages de tout ordre en Albanie, appartenant à l'Etat italien ou à des institutions semi-publiques italiennes. L'Italie renonce également à revendiquer tous intérêts spéciaux ou toute influence particulière acquis en Albanie, en conséquence de l'agression du 7 avril 1939 ou en vertu de traités et accords conclus avant cette date.

Les clauses économiques du présent Traité dont peuvent se prévaloir les Puissances Alliées et Associées, s'appliqueront aux autres biens italiens et aux autres relations économiques entre l'Albanie et l'Italie.

Article 30

Les ressortissants italiens en Albanie jouiront du même statut juridique que les ressortissants des autres pays étrangers; toutefois l'Italie reconnaît la validité de toutes mesures qui seraient prises par l'Albanie pour l'annulation ou la modification des concessions ou des droits particuliers accordés à des ressortissants italiens, à condition que ces mesures interviennent dans un délai d'un an à partir de l'entrée en vigueur du présent Traité.

Article 31

L'Italie reconnaît que tous les accords et arrangements intervenus entre l'Italie et les autorités qu'elle avait installées en Albanie entre le 7 avril 1939 et le 3 septembre 1943 sont nuls et non avenus.

Article 32

L'Italie reconnaît la validité de toutes mesures que l'Albanie pourra juger nécessaire de prendre pour confirmer les dispositions ci-dessus ou les mettre à exécution.

SECTION VII—ETHIOPIE

Article 33

L'Italie reconnaît et s'engage à respecter la souveraineté et l'indépendance de l'Etat éthiopien.

Article 34

L'Italie renonce formellement en faveur de l'Ethiopie à tous biens (à l'exception des immeubles normalement occupés par les missions diplomatiques ou consulaires), à tous droits, intérêts et avantages de tout ordre acquis à un moment quelconque en Ethiopie par l'Etat italien, de même qu'à tous les biens semi-publics tels que les définit le premier paragraphe de l'annexe XIV du présent Traité.

L'Italie renonce également à revendiquer tous intérêts spéciaux ou toute influence particulière en Ethiopie.

Article 35

L'Italie reconnaît la validité de toutes les mesures que le Gouvernement éthiopien a prises ou pourra prendre dans l'avenir en vue d'annuler des mesures prises par l'Italie à l'égard de l'Ethiopie, après le 3 octobre 1935, ainsi que leurs effets.

Article 36

Les ressortissants italiens en Ethiopie jouiront du même statut juridique que les ressortissants des autres pays étrangers; toutefois, l'Italie reconnaît la validité de toutes les mesures qui seraient prises par le Gouvernement éthiopien pour l'annulation ou la modification des concessions ou des droits particuliers accordés à des ressortissants italiens, à condition que ces mesures interviennent dans un délai d'un an à partir de l'entrée en vigueur du présent Traité.

Article 37

Dans un délai de dix-huit mois à compter de l'entrée en vigueur du présent Traité, l'Italie restituera toutes oeuvres d'art, tous objets religieux, archives et objets de valeur historique, appartenant à l'Ethiopie ou à ses ressortissants, et transportés d'Ethiopie en Italie depuis le 3 octobre 1935.

Article 38

La date à partir de laquelle les dispositions du présent Traité deviendront applicables en ce qui concerne toutes mesures et faits de toute nature engageant la responsabilité de l'Italie ou de ressortissants italiens à l'égard de l'Ethiopie, est fixée au 3 octobre 1935.

SECTION VIII—ACCORDS INTERNATIONAUX

Article 39

L'Italie s'engage à accepter tous les arrangements qui ont été conclus ou qui pourront être conclus pour la liquidation de la Société des Nations, de la Cour Permanente de Justice Internationale ainsi que de la Commission financière internationale en Grèce.

Article 40

L'Italie renonce à tous droits, à tous titres et à toutes réclamations résultant du régime du Mandat ou des engagements de tout ordre résultant de ce régime, ainsi qu'à tous droits spéciaux de l'Etat italien concernant l'un quelconque des territoires sous mandat.

Article 41

L'Italie accepte les dispositions de l'Acte final du 31 août 1945 et de l'accord franco-britannique du même jour sur le statut de Tanger ainsi que toutes les dispositions que les Puissances signataires pourront adopter en vue de donner effet à ces instruments.

Article 42

L'Italie s'engage à accepter tous arrangements qui pourront être conclus par les Puissances Alliées et Associées intéressées pour modifier les traités relatifs au bassin du Congo en vue de les mettre en harmonie avec la Charte des Nations Unies et reconnaîtra la validité de ces arrangements.

Article 43

L'Italie renonce à tous les droits et intérêts qu'elle peut avoir en vertu de l'article 16 du Traité de Lausanne signé le 24 juillet 1923[1].

SECTION IX—TRAITÉS BILATÉRAUX

Article 44

1. Chacune des Puissances Alliées ou Associées notifiera à l'Italie, dans un délai de six mois à partir de l'entrée en vigueur du présent Traité, les traités bilatéraux qu'elle a conclus avec l'Italie antérieurement à la guerre et dont elle désire le maintien ou la remise en vigueur. Toutes dispositions des traités dont il s'agit qui ne seraient pas en conformité avec le présent Traité seront toutefois supprimées.

2. Tous les traités de cette nature qui auront fait l'objet de cette notification seront enregistrés[2] au Secrétariat de l'Organisation des Nations Unies, conformément à l'article 102 de la Charte des Nations Unies.

3. Tous les traités de cette nature qui n'auront pas fait l'objet d'une telle notification seront tenus pour abrogés.

PARTIE III

CRIMINELS DE GUERRE

Article 45

1. L'Italie prendra toutes les mesures nécessaires pour assurer l'arrestation et la livraison en vue de leur jugement:

(a) des personnes accusées d'avoir commis, ordonné des crimes de guerre et des crimes contre la paix ou l'humanité, ou d'en avoir été complices;

(b) des ressortissants de toute Puissance Alliée ou Associée accusés d'avoir enfreint les lois de leur pays en commettant des actes de trahison ou en collaborant avec l'ennemi pendant la guerre.

2. A la demande du Gouvernement de l'une des Nations Unies intéressées, l'Italie devra assurer en outre la comparution, comme témoins, des

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[1] Société des Nations, *Recueil des Traités*, volume XXVIII, page 11.

[2] Voir la note enregistrée par la Tchécoslovaquie, Nations Unies, *Recueil des Traités*, volume 26, page 103.

personnes relevant de sa juridiction dont la déposition est nécessaire pour le jugement des personnes visées au paragraphe 1 du présent article.

3. Tout désaccord concernant l'application des dispositions des paragraphes 1 et 2 du présent article sera soumis par tout Gouvernement intéressé aux Ambassadeurs des Etats-Unis d'Amérique, de France, du Royaume-Uni, et de l'Union Soviétique à Rome, qui se mettront d'accord sur le point soulevé.

PARTIE IV

CLAUSES MILITAIRES, NAVALES ET AERIENNES

SECTION I—DURÉE D'APPLICATION

Article 46

Chacune des clauses militaires, navales et aériennes du présent Traité demeurera en vigueur aussi longtemps qu'elle n'aura pas été modifiée, entièrement ou partiellement, par accord entre les Puissances Alliées et Associées et l'Italie, ou, après que l'Italie sera devenue membre de l'Organisation des Nations Unies, par accord entre le Conseil de Sécurité et l'Italie.

SECTION II—LIMITATION GÉNÉRALES

Article 47

1. *(a)* Le système des fortifications et des installations militaires permanentes italiennes le long de la frontière franco-italienne, ainsi que leurs armements, seront détruits ou enlevés.

(b) Ce système devra être entendu comme comprenant seulement les ouvrages d'artillerie et d'infanterie, qu'ils soient réunis en groupes ou qu'ils soient isolés, les casemates et blockhaus de n'importe quel type, les installations protégées pour le personnel, le matériel et les approvisionnements ainsi que les munitions, les observatoires et les téléfériques militaires, quels que soient leur importance et leur état d'entretien ou leur degré d'avancement, que ces constructions soient en métal, en maçonnerie ou en béton, ou qu'elles soient creusées dans le roc.

2. La destruction ou l'enlèvements prévus au paragraphe 1 ci-dessus s'effectueront dans la limite d'une distance de 20 kilomètres, à partir d'un point quelconque de la frontière telle qu'elle est définie par le présent

Traité; ils devront être achevés dans un délai d'un an à partir de l'entrée en vigueur du présent Traité.

3. La reconstruction de ces fortifications et installations est interdite.

4. *(a)* A l'est de la frontière franco-italienne, la construction des ouvrages suivants est interdite: fortifications permanentes où peuvent être installées des armes capables de tirer en territoire français ou dans les eaux territoriales françaises; installations militaires permanentes pouvant être utilisées pour conduire ou diriger le tir en territoire français ou dans les eaux territoriales françaises; moyens permanents de ravitaillement et de stockage édifiés uniquement pour l'usage des fortifications et installations ci-dessus.

(b) Cette interdiction ne vise pas les autres types de fortifications non permanentes ou les casernements et installations de surface qui sont uniquement destinés à répondre à des nécessités d'ordre intérieur et de défense locale des frontières.

5. Dans une zone côtière de 15 kilomètres de profondeur s'étendant de la frontière franco-italienne jusqu'au méridien 9°30′ est, l'Italie ne sera autorisée, ni à établir de nouvelles bases ou installations navales permanentes, ni à développer les bases ou installations existantes. Cette disposition ne fait pas obstacle aux modifications peu importantes des installations navales existantes non plus qu'à leur entretien, pourvu que la capacité de l'ensemble de ces installations ne soit pas accrue.

Article 48

1. *(a)* Toutes fortifications et installations permanentes italiennes existant le long de la frontière italo-yougoslave, y compris leurs armements, seront détruites ou enlevées.

(b) Ces fortifications et installations devront être entendues comme comprenant seulement les ouvrages d'artillerie et d'infanterie, qu'ils soient réunis en groupes ou qu'ils soient isolés, les casemates et blockhaus de n'importe quel type, les installations protégées pour le personnel, le matériel et les approvisionnements ainsi que les munitions, les observatoires et les téléfériques militaires, quels que soient leur importance et leur état d'entretien ou leur degré d'avancement, que ces constructions soient en métal, en maçonnerie ou en béton, ou qu'elles soient creusées dans le roc.

2. La destruction ou l'enlèvement prévus au paragraphe 1 ci-dessus s'effectueront dans la limite d'une distance de 20 kilomètres à partir d'un point quelconque de la frontière telle qu'elle est définie par le présent Traité; ils devront être achevés dans un délai d'un an à partir de l'entrée en vigueur du présent Traité.

3. La reconstruction de ces fortifications et installations est interdite.

4. *(a)* La construction des ouvrages suivants est interdite à l'ouest de la frontière italo-yougoslave: fortifications permanentes où peuvent être installées des armes capables de tirer en territoire yougoslave ou dans les eaux territoriales yougoslaves, installations militaires permanentes pouvant être utilisées pour conduire ou diriger le tir en territoire yougoslave ou dans les eaux territoriales yougoslaves; moyens permanents de ravitaillement et de stockage édifiés uniquement pour l'usage des fortifications et installations ci-dessus.

(b) Cette interdiction ne vise pas les autres types de fortifications non permanentes ou les casernements et installations de surface qui sont uniquement destinés à répondre à des nécessités d'ordre intérieur et de défense locale des frontières.

5. Dans une zone côtière de 15 kilomètres de profondeur s'étendant de la frontière entre l'Italie et la Yougoslavie et entre l'Italie et le Territoire Libre de Trieste jusqu'au parallèle 44°50′ nord et dans les îles situées le long de cette zone côtière, l'Italie ne sera autorisée, ni à établir de nouvelles bases ou installations navales permanentes, ni à développer les bases ou installations existantes. Cette disposition ne fait pas obstacle aux modifications peu importantes des installations navales et des bases existantes non plus qu'à leur entretien, pourvu que la capacité de l'ensemble de ces installations et de ces bases ne soit pas accrue.

6. Dans la presqu'île d'Apulie, à l'est du méridien 17°45′ est, l'Italie ne sera autorisée ni à construire aucune installation permanente militaire, navale ou d'aviation militaire, ni à développer les installations existantes. Cette disposition ne fait pas obstacle aux modifications peu importantes des installations existantes, non plus qu'à leur entretien, pourvu que la capacité de l'ensemble de ces installations ne soit pas accrue. Toutefois, la construction de casernements pour les forces de sécurité qu'il serait

nécessaire d'employer à des missions d'ordre intérieur et à la défense locale des frontières sera autorisée.

Article 49

1. Pantelleria, les îles Pélage (Lampéduse, Lampione et Linosa), ainsi que Pianosa (dans l'Adriatique) seront et demeureront démilitarisées.

2. Leur démilitarisation devra être achevée dans un délai d'un an à partir de l'entrée en vigueur du présent Traité.

Article 50

1. En Sardaigne, tous les emplacements permanents d'artillerie de défense des côtes ainsi que leurs armements et toutes les installations navales situées à moins de 30 kilomètres des eaux territoriales françaises seront, soit transférés en Italie continentale, soit démolis dans un délai d'un an à partir de l'entrée en vigueur du présent Traité.

2. En Sicile et en Sardaigne, toutes les installations permanentes ainsi que le matériel destinés à l'entretien et au stockage des torpilles, des mines marines et des bombes seront, soit démolis, soit transférés en Italie continentale dans un délai d'un an à partir de l'entrée en vigueur du présent Traité.

3. Aucune amélioration, reconstruction ou extension des installations existantes ou des fortifications permanentes de Sicile et de Sardaigne ne sera autorisée; toutefois, sauf dans les zones de la Sardaigne septentrionale définies au paragraphe 1 ci-dessus, il pourra être procédé à l'entretien normal de ces installations ou fortifications permanentes et des armes qui y sont déjà installées.

4. En Sicile et en Sardaigne, il sera interdit à l'Italie de construire aucune installation ou fortification navale, militaire ou d'aviation militaire, à l'exception des casernements des forces de sécurité qu'il serait nécessaire d'employer à des missions d'ordre intérieur.

Article 51

L'Italie ne possédera, ne fabriquera ou n'expérimentera 1° aucune arme atomique, 2° aucun projectile auto-moteur ou dirigé, ni aucun dispositif employé pour le lancement de ces projectiles (autre que torpilles ou dispositifs de lancement de torpilles faisant partie de l'armement normal des navires autorisés par le présent Traité), 3° aucun canon d'une portée supérieure à 30 kilomètres, 4° aucune mine marine ou torpille fonctionnant par mécanisme à influence, 5° aucune torpille humaine.

Article 52

L'acquisition, à l'intérieur ou hors de l'Italie, de matériel de guerre d'origine allemande ou japonaise, ou construit sur des plans allemands ou japonais, ainsi que la fabrication de ce matériel, seront interdites à l'Italie.

Article 53

L'Italie ne devra pas fabriquer ou posséder, à titre public ou privé, de matériel de guerre en excédent ou d'un type différent de celui qui est nécessaire aux forces armées autorisées par les sections III, IV et V ci-dessous.

Article 54

Le nombre total des chars lourds et moyens des forces armées italiennes ne pourra être supérieur à 200.

Article 55

En aucun cas, un officier ou sous-officier de l'ancienne milice fasciste ou de l'ancienne armée républicaine fasciste ne pourra être admis à servir avec un grade d'officier ou de sous-officier dans l'armée, la marine ou l'aviation italienne, ainsi que dans les carabiniers, à l'exception de ceux qui auront été réhabilités par l'organisme compétent, conformément à la loi italienne.

SECTION III—LIMITATIONS À IMPOSER À LA MARINE ITALIENNE

Article 56

1. La flotte italienne actuelle sera réduite aux unités énumérées à l'annexe XII A.

2. Des unités supplémentaires, ne figurant pas à l'annexe XII et utilisées dans le but exclusif de draguer les mines, pourront être maintenues jusqu'à la fin de la période de dragage qui sera fixée par la Commission Centrale Internationale de Dragage pour le déblaiement des mines dans les eaux européennes.

3. Dans un délai de deux mois après la fin de ladite période, ceux

de ces bâtiments qui auront été prêtés à la marine italienne par d'autres Puissances, seront rendus à ces Puissances, et toutes les autres unités supplémentaires seront désarmées et transformées en vue d'un usage civil.

Article 57

1. L'Italie prendra les mesures suivantes à l'égard des unités de la marine italienne spécifiées à l'annexe XII B:

(a) Lesdites unités devront être mises à la disposition des Gouvernements des Etats-Unis d'Amérique, de la France, du Royaume-Uni et de l'Union Soviétique.

(b) Les bâtiments de guerre qui doivent être livrés en application de l'alinéa (*a*) ci-dessus seront entièrement équipés et prêts au matériel pour toute opération, avec tout ce qui est nécessaire à l'emploi des armes, le stock de bord des pièces de rechange au complet, et avec toute la documentation technique nécessaire.

(c) La livraison des bâtiments de guerre spécifiés ci-dessus sera effectuée dans un délai de trois mois à partir de l'entrée en vigueur du présent Traité, sauf dans le cas des navires qui ne peuvent être remis en état en trois mois et pour lesquels le délai de livraison pourra être prorogé par les Quatre Gouvernements.

(d) Les stocks de réserve de pièces de rechange et les stocks de réserve de matériel pour l'emploi des armes correspondant aux navires spécifiés ci-dessus devront, autant que possible, être fournis en même temps que les navires.

Le complément des stocks de réserve de pièces de rechange et des stocks de réserve de matériel pour l'emploi des armes sera fourni en quantités et à des dates qui seront fixées par les Quatre Gouvernements et de toute façon dans un délai maximum d'un an à partir de l'entrée en vigueur du présent Traité.

2. Les modalités des transferts et livraisons mentionnés ci-dessus seront fixées par une Commission des Quatre Puissances qui sera instituée par un protocole séparé.

3. Au cas où un ou plusieurs des bâtiments mentionnés à l'annexe XII B et devant faire l'objet d'un transfert viendraient à être perdus ou à subir un dommage ne pouvant être réparé avant la date prévue pour le transfert, quelle que soit la cause de la perte ou du dommage, l'Italie

s'engage à remplacer ce bâtiment ou ces bâtiments par un tonnage équivalent prélevé sur les bâtiments figurant à l'annexe XII A. Dans ce cas le bâtiment ou les bâtiments de remplacement seront choisis par les Ambassadeurs des Etats-Unis d'Amérique, de France, du Royaume-Uni et de l'Union Soviétique à Rome.

Article 58

1. L'Italie appliquera les mesures suivantes concernant les sous-marins et les bâtiments de guerre hors d'état de servir. Les délais spécifiés doivent s'entendre comme partant de la date d'entrée en vigueur du présent Traité.

(a) Les bâtiments de guerre de surface à flot qui ne figurent pas dans l'annexe XII, y compris les bâtiments de guerre en construction à flot, seront détruits ou mis à la ferraille dans un délai de neuf mois;

(b) Les bâtiments de guerre en construction sur cale seront détruits ou mis à la ferraille dans un délai de neuf mois;

(c) Les sous-marins à flot qui ne figurent pas dans l'annexe XII B seront coulés en pleine mer par plus de 100 brasses de fond dans un délai de trois mois;

(d) Les bâtiments de guerre coulés dans les ports italiens et les chenaux d'entrée de ces ports, qui entravent la navigation normale, seront, dans un délai de deux ans, détruits sur place ou pourront être renfloués et, par la suite, détruits ou mis à la ferraille;

(e) Les bâtiments de guerre coulés dans les eaux italiennes peu profondes et qui n'entravent pas la navigation normale seront, dans un délai d'un an, mis hors d'état d'être renfloués;

(f) Les bâtiments de guerre pouvant être transformés qui ne rentrent pas dans la définition du matériel de guerre et qui ne figurent pas à l'annexe XII pourront être transformés pour des usages civils ou devront être démolis dans un délai de deux ans.

2. L'Italie s'engage à récupérer, avant d'appliquer les mesures d'immersion ou de destruction de navires de guerre et de sous-marins mentionnés dans le précédent paragraphe, le matériel et les pièces détachées qui pourront servir à compléter les stocks de bord et de réserve de pièces de rechange et de matériel qui devront être fournis en vertu du paragraphe 1 de l'article 57 pour tous les navires spécifiés à l'annexe XII B.

L'Italie pourra également, sous le contrôle des Ambassadeurs des

Etats-Unis d'Amérique, de France, du Royaume-Uni et de l'Union Soviétique à Rome, récupérer tout équipement et toute pièce de rechange, n'ayant pas le caractère d'armements, et susceptibles d'être aisément transformés en vue d'un usage civil dans l'économie italienne.

Article 59

1. Il ne sera construit, acquis ou remplacé par l'Italie aucun bâtiment de ligne.

2. Il ne sera construit, acquis, utilisé ou expérimenté par l'Italie aucun porte-avions, sous-marin ou autre bâtiment submersible, aucune vedette lance-torpilles et aucun type spécialisé de bâtiment d'assaut.

3. Le total des déplacements-types des navires de combat de la flotte italienne autres que les bâtiments de ligne, y compris les navires en construction après la date de leur lancement, ne devra pas dépasser 67.500 tonnes.

4. Le remplacement des navires de combat devra être effectué par l'Italie dans la limite du tonnage indiqué au paragraphe 3. Le remplacement des navires auxiliaires ne sera soumis à aucune restriction.

5. L'Italie s'engage à ne faire l'acquisition ou à n'entreprendre la construction d'aucun navire de combat avant le 1er janvier 1950, sauf au cas où il serait nécessaire de remplacer une unité, autre qu'un bâtiment de ligne, perdue accidentellement et, dans ce cas, le déplacement du nouveau navire ne devrait pas excéder de plus de dix pour cent le déplacement du navire perdu.

6. Les termes utilisés dans le présent article sont, aux fins du présent Traité, définis dans l'annexe XIII A.

Article 60

1. L'effectif total de la marine italienne, non compris le personnel de l'aéronautique navale, ne devra pas dépasser 25.000 officiers et hommes.

2. Pendant la période de dragage des mines telle qu'elle sera fixée par la Commission Centrale Internationale de Dragage pour le déblaiement des mines dans les eaux européennes, l'Italie sera autorisée à employer à cet effet un nombre supplémentaire d'officiers et d'hommes qui ne devra pas dépasser 2.500.

3. L'effectif permanent de la marine en excédent de celui qui est autorisé par le paragraphe 1 sera progressivement réduit aux chiffres et dans

les délais indiqués ci-après, les délais devant être comptés à partir de l'entrée en vigueur du présent Traité:

(a) 30.000 dans un délai de six mois;

(b) 25.000 dans un délai de neuf mois.

Deux mois après l'achèvement des opérations de dragage des mines par la marine italienne, le personnel supplémentaire autorisé par le paragraphe 2 devra être licencié ou intégré dans les effectifs indiqués ci-dessus.

4. En dehors des effectifs mentionnés aux paragraphes 1 et 2 et du personnel de l'aéronautique navale autorisé par l'article 65, aucune personne ne devra recevoir, sous aucune forme, d'instruction navale au sens de l'annexe XIII B.

SECTION IV—LIMITATIONS À IMPOSER À L'ARMÉE ITALIENNE

Article 61

L'armée italienne, y compris les gardes-frontières, sera limitée à une force de 185.000 hommes comprenant le personnel de commandement, les unités combattantes et les services et à 65.000 carabiniers; toutefois, l'un ou l'autre de ces deux éléments pourra varier de 10.000 hommes, pourvu que l'effectif global ne dépasse pas 250.000 hommes. L'organisation et l'armement des forces terrestres italiennes ainsi que leur répartition sur l'ensemble du territoire italien seront conçus de manière à répondre exclusivement à des tâches de caractère intérieur, aux besoins de la défense locale des frontières italiennes et de la défense anti-aérienne.

Article 62

Le personnel de l'armée italienne en excédent des chiffres autorisés aux termes de l'article 61 ci-dessus sera licencié dans un délai de six mois à partir de l'entrée en vigueur du présent Traité.

Article 63

Aucune forme d'instruction militaire, au sens de l'annexe XIII B, ne sera donnée aux personnes ne faisant pas partie de l'armée italienne ou des carabiniers.

SECTION V—LIMITATIONS À IMPOSER À L'AVIATION ITALIENNE

Article 64

1. L'aviation militaire italienne, y compris toute l'aéronautique navale, sera limitée à 200 appareils de combat et de reconnaissance et à 150 avions de transport, de sauvetage en mer, d'instruction (avions-écoles) et de liaison. Dans ces chiffres totaux seront compris les appareils de réserve. Exception faite des avions de combat et de reconnaissance, aucun appareil ne sera muni d'armement. L'organisation et l'armement de l'aviation italienne ainsi que sa répartition sur le territoire italien seront conçus de manière à répondre uniquement aux tâches de caractère intérieur, aux besoins de la défense locale des frontières italiennes et de la défense contre les attaques aériennes.

2. L'Italie ne possèdera ou n'acquerra aucun avion conçu essentiellement comme bombardier et comportant des dispositifs intérieurs pour le transport des bombes.

Article 65

1. Le personnel de l'aviation militaire italienne, y compris celui de l'aéronautique navale, sera limité à un effectif total de 25.000 hommes comprenant le personnel de commandement, les unités combattantes et les services.

2. Aucune forme d'instruction militaire aérienne, au sens de l'annexe XIII B, ne sera donnée aux personnes ne faisant pas partie de l'aviation militaire italienne.

Article 66

L'aviation militaire italienne en excédent des chiffres autorisés aux termes de l'article 65 ci-dessus sera dissoute dans un délai de six mois à partir de l'entrée en vigueur du présent Traité.

SECTION VI—SORT DU MATÉRIEL DE GUERRE (tel qu'il est défini à l'annexe XIII C)

Article 67

1. Tout le matériel de guerre de provenance italienne, en excédent de celui qui est autorisé pour les forces armées spécifiées aux Sections III, IV et V, sera mis à la disposition des Gouvernements des Etats-Unis d'Amérique,

de la France, du Royaume-Uni et de l'Union Soviétique conformément aux instructions que ceux-ci pourront donner à l'Italie.

2. Tout le matériel de guerre de provenance alliée, en excédent de celui qui est autorisé pour les forces armées spécifiées aux Sections III, IV et V, sera mis à la disposition de la Puissance Alliée ou Associée intéressée conformément aux instructions qui seront données par celle-ci à l'Italie.

3. Tout le matériel de guerre de provenance allemande ou japonaise, en excédent de celui qui est autorisé pour les forces armées spécifiées aux Sections III, IV et V, ainsi que tous les projets de provenance allemande ou japonaise, y compris les bleus, prototypes, modèles d'expérience et plans existants, seront mis à la disposition des Quatre Gouvernements conformément aux instructions que ceux-ci pourront donner à l'Italie.

4. L'Italie renonce à tous ses droits sur le matériel de guerre mentionné ci-dessus et se conformera aux dispositions du présent article dans un délai d'un an à partir de l'entrée en vigueur du présent Traité, sous réserve des dispositions contenues dans les articles 56 à 58 ci-dessus.

5. L'Italie fournira aux Quatre Gouvernements, dans un délai de six mois à partir de l'entrée en vigueur du présent Traité, des listes de tout le matériel de guerre en excédent.

Section VII—Action préventive contre le réarmement de l'Allemagne et du Japon

Article 68

L'Italie s'engage à apporter son entière collaboration aux Puissances Alliées et Associées en vue de mettre l'Allemagne et le Japon dans l'impossibilité de prendre, hors des territoires allemand et japonais, des mesures tendant à leur réarmement.

Article 69

L'Italie s'engage à n'autoriser, sur le territoire italien, ni l'emploi, ni la formation de techniciens, y compris le personnel de l'aviation militaire ou civile, qui sont ou ont été des ressortissants de l'Allemagne ou du Japon.

Article 70

L'Italie s'engage à n'acquérir ou fabriquer aucun avion civil de modèle allemand ou japonais, ou comportant des éléments importants de fabrication ou de conception allemande ou japonaise.

SECTION VIII—PRISONNIERS DE GUERRE

Article 71

1. Les prisonniers de guerre italiens seront rapatriés aussitôt que possible conformément aux arrangements conclus entre chacune des Puissances qui détiennent ces prisonniers et l'Italie.

2. Tous les frais entrainés par le transfert des prisonniers de guerre italiens, y compris les frais de subsistance, depuis leurs centres de rapatriement respectifs, choisis par le Gouvernement de la Puissance Alliée ou Associée intéressée, jusqu'au lieu d'entrée sur le territoire italien, seront à la charge du Gouvernement italien.

SECTION IX—DRAGAGE DES MINES

Article 72

A partir de l'entrée en vigueur du présent Traité, l'Italie sera invitée à devenir membre de la Commission pour la zone méditerranéenne de l'Organisation Internationale de Dragage pour le déblaiement des mines dans les eaux européennes, et elle s'engage à maintenir à la disposition de la Commission Centrale de Dragage des mines la totalité de ses moyens de dragage jusqu'à la fin de la période de dragage d'après-guerre, telle qu'elle sera déterminée par la Commission Centrale.

PARTIE V

RETRAIT DES FORCES ALLIEES

Article 73

1. Toutes les forces armées des Puissances Alliées et Associées seront retirées d'Italie aussitôt que possible et en tout cas dans un délai maximum de quatre-vingt-dix jours à partir de l'entrée en vigueur du présent Traité.

2. Tous les biens italiens n'ayant pas fait l'objet d'une indemnisation et qui se trouvent en la possession des forces armées des Puissances Alliées et Associées en Italie à la date d'entrée en vigueur du présent Traité seront restitués au Gouvernement italien dans le même délai de quatre-vingt-dix jours ou donneront lieu à l'attribution d'une indemnité convenable.

3. Tous les avoirs en banque et les sommes en espèces qui seront en la possession des forces armées des Puissances Alliées et Associées au

moment de l'entrée en vigueur du présent Traité et qui leur auront été fournis gratuitement par le Gouvernement italien seront restitués à ce Gouvernement dans les mêmes conditions et, s'ils ne le sont pas, le Gouvernement italien sera crédité d'une somme correspondant à leur montant.

PARTIE VI

RECLAMATIONS NEES DE LA GUERRE

SECTION I — RÉPARATIONS

Article 74

A. *Réparations au profit de l'Union des Républiques Soviétiques Socialistes*

1. L'Italie paiera à l'Union Soviétique des réparations pour une valeur de 100.000.000 de dollars des Etats-Unis pendant une période de sept ans, à compter de l'entrée en vigueur du présent Traité. Il ne sera pas effectué pendant les deux premières années de prestations prélevées sur la production industrielle courante.

2. Les livraisons au titre des réparations proviendront des sources suivantes:

(a) Une part des installations et de l'outillage industriels italiens destinés à la fabrication du matériel de guerre qui ne sont ni nécessaires aux besoins des effectifs militaires autorisés, ni immédiatement adaptables à des usages civils et qui seront enlevés d'Italie en vertu de l'article 67 du présent Traité;

(b) Les avoirs italiens en Roumanie, en Bulgarie et en Hongrie, sous réserve des exceptions spécifiées au paragraphe 6 de l'article 79;

(c) La production industrielle courante de l'Italie y compris la production des industries extractives.

3. Les quantités et les catégories de marchandises à livrer feront l'objet d'accords entre le Gouvernement de l'Union Soviétique et le Gouvernement italien; le choix en sera effectué et les livraisons en seront échelonnées de façon à ne pas entraver la reconstruction économique de l'Italie et à ne pas imposer aux autres Puissances Alliées ou Associées des charges supplémentaires. Les accords conclus en vertu de ce paragraphe seront communi-

qués aux Ambassadeurs des Etats-Unis d'Amérique, de France, du Royaume-Uni et de l'Union Soviétique à Rome.

4. L'Union Soviétique fournira à l'Italie, à des conditions commerciales, les matières premières ou les produits que l'Italie importe normalement et qui sont nécessaires à la production de ces marchandises. Le paiement de ces matières premières ou de ces produits sera effectué en déduisant leur valeur de celle des marchandises livrées à l'Union Soviétique.

5. Les Quatre Ambassadeurs détermineront la valeur des avoirs italiens qui seront transférés à l'Union Soviétique.

6. La base de calcul pour le règlement prévu au présent article sera le dollar des Etats-Unis à sa parité or au 1er juillet 1946, c'est-à-dire 35 dollars pour une once d'or.

B. *Réparations au profit de l'Albanie, de l'Ethiopie, de la Grèce et de la Yougoslavie*

1. L'Italie paiera des réparations aux Etats suivants:
Albanie: pour une valeur de 5.000.000 de dollars des Etats-Unis.
Ethiopie: pour une valeur de 25.000.000 de dollars des Etats-Unis.
Grèce: pour une valeur de 105.000.000 de dollars des Etats-Unis.
Yougoslavie: pour une valeur de 125.000.000 de dollars des Etats-Unis.

Ces paiements seront effectués pendant une période de sept ans à compter de l'entrée en vigueur du présent Traité. Il ne sera pas effectué pendant les deux premières années de prestations prélevées sur la production industrielle courante.

2. Les livraisons au titre des réparations proviendront des sources suivantes:

(a) Une part des installations et de l'outillage industriels italiens destinés à la fabrication du matériel de guerre qui ne sont ni nécessaires aux besoins des effectifs militaires autorisés, ni immédiatement adaptables à des usages civils et qui seront enlevés d'Italie en vertu de l'article 67 du présent Traité;

(b) La production industrielle courante de l'Italie, y compris les produits des industries extractives;

(c) Toutes autres catégories de prestations en capital ou services à

l'exclusion des avoirs italiens qui, aux termes de l'article 79 du présent Traité, relèvent de la juridiction des Etats énumérés au paragraphe 1 ci-dessus. Les prestations faites en application du présent paragraphe comprendront les navires à passagers *Saturnia et Vulcania*, ou l'un des deux, dans le cas où, après évaluation par les Quatre Ambassadeurs, ils seraient demandés dans une période de quatre-vingt dix jours par l'un des Etats énumérés au paragraphe 1 ci-dessus. Les prestations accomplies au titre du présent paragraphe pourront également comprendre des semences.

3. Les quantités et les catégories de marchandises et services à livrer feront l'objet d'accords entre les gouvernements ayant droit à des réparations et le Gouvernement italien; le choix en sera effectué et les livraisons en seront échelonnées de façon à ne pas entraver la reconstruction économique de l'Italie et à ne pas imposer aux autres Puissances Alliées ou Associées des charges supplémentaires.

4. Les Etats ayant droit à des réparations au titre de la production courante fourniront à l'Italie, à des conditions commerciales, les matières premières ou les produits que l'Italie importe normalement et qui seront nécessaires à la production de ces marchandises. Le paiement de ces matières premières ou de ces produits sera effectué en déduisant leur valeur de celle des marchandises livrées.

5. La base de calcul pour le règlement prévu au présent article sera le dollar des Etats-Unis à sa parité or au 1er juillet 1946, c'est-à-dire 35 dollars pour une once d'or.

6. Les réclamations des Etats énumérés au paragraphe 1 de la partie B du présent article, dans la mesure où elles excèdent les montants spécifiés dans ce paragraphe, seront satisfaites à l'aide des actifs italiens placés sous la juridiction respective de ces Etats par l'article 79 du présent Traité.

7. *(a)* Les Quatre Ambassadeurs coordonneront et contrôleront l'exécution des dispositions de la partie B du présent article. Ils se concerteront avec les chefs des missions diplomatiques à Rome des Etats mentionnés au paragraphe 1 de la partie B et, lorsqu'il y aura lieu, avec le Gouvernement italien et ils donneront conseil aux parties intéressées. Aux fins du présent article, les Quatre Ambassadeurs continueront leurs fonctions jusqu'à l'expiration de la période prévue au paragraphe 1 de la partie B pour les livraisons au titre des réparations.

(b) En vue d'éviter les conflits ou les doubles attributions dans la répartition de la production et des ressources italiennes entre les divers Etats ayant droit aux réparations en vertu de la partie B du présent article, les Quatre Ambassadeurs seront informés par tout Gouvernement ayant droit aux réparations en vertu de la partie B du présent article et par le Gouvernement italien de l'ouverture de négociations en vue de conclure un accord, conformément aux dispositions du paragraphe 3 ci-dessus, ainsi que du progrès de ces négociations. Au cas où un différend s'élèverait au cours des négociations, les Quatre Ambassadeurs auront compétence pour décider de toute question qui leur serait soumise par l'un ou l'autre desdits Gouvernements, ou par tout autre Gouvernement ayant droit aux réparations en vertu de la partie B du présent article.

(c) Une fois conclus, les accords seront communiqués aux Quatre Ambassadeurs. Ceux-ci pourront recommander qu'un accord qui ne serait pas ou qui aurait cessé d'être en harmonie avec les principes énoncés au paragraphe 3 ou à l'alinéa *(b)* ci-dessus, soit modifié d'une manière appropriée.

C. *Dispositions spéciales pour livraisons anticipées*

Aucune disposition de la partie A et de la partie B du présent article ne sera considérée comme excluant pendant les deux premières années les prestations prélevées sur la production courante prévues au paragraphe 2*(c)* de la partie A et au paragraphe 2*(b)* de la partie B, si de telles prestations sont faites en exécution d'accords conclus entre le Gouvernement ayant droit aux réparations et le Gouvernement italien.

D. *Réparations au profit d'autres Etats*

1. Les réclamations des autres Puissances Alliées et Associées seront satisfaites sur les actifs italiens soumis à leurs juridictions respectives par l'article 79 du présent Traité.

2. Les réclamations de tout Etat bénéficiant de cessions de territoires en application du présent Traité et qui n'est pas mentionné dans la Partie B du présent article seront satisfaites également par le transfert audit Etat, sans paiement de sa part, des installations et de l'outillage industriels situés dans les territoires cédés, qui servent soit à la distribution de l'eau, soit à la production et à la distribution du gaz et de l'électricité, et qui appartiennent à toute société italienne dont le siège social est situé en Italie ou y est

transféré, ainsi que par le transfert de tous autres avoirs de ces sociétés en territoire cédé.

3. La responsabilité résultant d'engagements financiers garantis par des hypothèques, des privilèges et autres charges grevant ces biens, sera assumée par le Gouvernement italien.

E. *Indemnisation pour les biens saisis au titre des réparations.*

Le Gouvernement italien s'engage à indemniser toute personne physique ou morale dont les biens sont saisis par suite de l'application des dispositions du présent article relatives aux réparations.

SECTION II—RESTITUTIONS PAR L'ITALIE

Article 75

1. L'Italie accepte les principes de la Déclaration des Nations Unies du 5 janvier 1943 et restituera dans le plus bref délai possible les biens enlevés du territoire de l'une quelconque des Nations Unies.

2. L'obligation de restituer s'applique à tous les biens identifiables se trouvant actuellement en Italie et qui ont été enlevés, par force ou par contrainte, du territoire de l'une des Nations Unies, par l'une des Puissances de l'Axe, quelles qu'aient été les transactions ultérieures par lesquelles le détenteur actuel de ces biens s'en est assuré la possession.

3. Le Gouvernement italien restituera en bon état les biens visés dans le présent article et prendra à sa charge tous les frais de main d'oeuvre, de matériaux et de transport engagés à cet effet en Italie.

4. Le Gouvernement italien coopérera avec les Nations Unies à la recherche et à la restitution des biens soumis à restitution aux termes du présent article et fournira à ses frais toutes les facilités nécessaires.

5. Le Gouvernement italien prendra les mesures nécessaires pour restituer les biens visés dans le présent article qui sont détenus dans un tiers pays par des personnes relevant de la juridiction italienne.

6. La demande de restitution d'un bien sera présentée au Gouvernement italien par le Gouvernement du pays du territoire duquel le bien a été enlevé, étant entendu que le matériel roulant sera considéré comme ayant été enlevé du territoire auquel il appartenait à l'origine. Les demandes devront être présentées dans un délai de six mois à partir de l'entrée en vigueur du présent Traité.

7. Il incombera au Gouvernement requérant d'identifier le bien et d'en prouver la propriété et au Gouvernement italien d'apporter la preuve que le bien n'a pas été enlevé par force ou par contrainte.

8. Le Gouvernement italien restituera au Gouvernement de la Nation Unie intéressée tout l'or monétaire ayant fait l'objet de spoliations par l'Italie ou transféré indûment en Italie, ou livrera au Gouvernement de la Nation Unie intéressée une quantité d'or égale en poids et en titre à la quantité enlevée ou indûment transférée. Le Gouvernement italien reconnait que cette obligation n'est pas affectée par les transferts ou les enlèvements d'or qui ont pu être effectués du territoire italien au profit d'autres Puissances de l'Axe ou d'un pays neutre.

9. Si, dans des cas particuliers, il est impossible à l'Italie d'effectuer la restitution d'objets présentant un intérêt artistique, historique ou archéologique qui font partie du patrimoine culturel de la Nation Unie du territoire de laquelle ces objets ont été enlevés par les ressortissants, les autorités ou les armées italiennes, usant de la force ou de la contrainte, l'Italie s'engage à remettre à la Nation Unie intéressée des objets de même nature ou d'une valeur sensiblement équivalente à celle des objets enlevés, dans la mesure où il est possible de s'en procurer en Italie.

SECTION III—ABANDON DE RÉCLAMATIONS PAR L'ITALIE

Article 76

1. L'Italie renonce, au nom du Gouvernement italien et des ressortissants italiens, à faire valoir contre les Puissances Alliées et Associées, toute réclamation de quelque nature que ce soit résultant directement de la guerre ou de mesures prises par suite de l'existence d'un état de guerre en Europe après le 1er septembre 1939, que la Puissance Alliée ou Associée intéressée ait été ou non en guerre avec l'Italie à l'époque.

Sont incluses dans cette renonciation:

(a) Les réclamations relatives à des pertes ou dommages subis par suite de l'action des forces armées ou des autorités de Puissances Alliées ou Associées;

(b) Les réclamations résultant de la présence, des opérations ou de l'action des forces armées ou des autorités de Puissances Alliées ou Associées sur le territoire italien;

(c) Les réclamations portant sur les décisions ou les ordonnances des tribunaux de prises de Puissances Alliées ou Associées, l'Italie acceptant de reconnaître comme valides et comme ayant force exécutoire toutes les décisions et ordonnances desdits tribunaux de prises rendues au 1er septembre 1939 ou postérieurement à cette date et concernant les navires italiens, les marchandises italiennes ou le paiement des frais;

(d) Les réclamations résultant de l'exercice des droits de belligérance ou de mesures prises en vue de l'exercice de ces droits.

2. Les dispositions du présent article excluront complètement et définitivement toutes réclamations de la nature de celles qui y sont visées, et qui seront dès lors éteintes, quelles que soient les parties intéressées. Le Gouvernement italien accepte de verser en lires une indemnité équitable pour satisfaire les réclamations des personnes qui ont fourni, sur réquisition, des marchandises ou des services aux forces armées de Puissances Alliés ou Associées sur le territoire italien, ainsi que les réclamations portées contre les forces armées de Puissances Alliées ou Associées relatives à des dommages causés sur le territoire italien et ne résultant pas de faits de guerre.

3. L'Italie renonce également, au nom du Gouvernement italien et des ressortissants italiens, à faire valoir des réclamations de la nature de celles qui sont visées au paragraphe 1 du présent article, contre toute Nation Unie qui a rompu les relations diplomatiques avec l'Italie et qui a pris des mesures en coopération avec les Puissances Alliées et Associées.

4. Le Gouvernement italien assumera la pleine responsabilité de toute la monnaie militaire alliée émise en Italie par les autorités militaires alliées, y compris toute la monnaie de cette nature en circulation à la date de l'entrée en vigueur du présent Traité.

5. La renonciation à laquelle l'Italie souscrit aux termes du paragraphe 1 du présent article s'étend à toutes les réclamations portant sur les mesures prises par l'une quelconque des Puissances Alliées ou Associées à l'égard des navires italiens entre le 1er Septembre 1939 et la date d'entrée en vigueur du présent Traité, ainsi que à toutes les réclamations et créances résultant des conventions sur les prisonniers de guerre actuellement en vigueur.

6. Les dispositions du présent article ne devront pas être considérées comme affectant les droits de propriété sur les câbles sous-marins qui, au début de la guerre, appartenaient au Gouvernement italien ou à des ressortissants italiens. Ce paragraphe ne fera pas obstacle à l'application aux câbles sous-marins de l'article 79 et de l'annexe XIV.

Article 77

1. A dater de l'entrée en vigueur du présent Traité, les biens en Allemagne de l'Etat et des ressortissants italiens ne seront plus considérés comme biens ennemis et toutes les restrictions résultant de leur caractère ennemi seront levées.

2. Les biens identifiables de l'Etat et des ressortissants italiens que les forces armées ou les autorités allemandes ont enlevés, par force ou par contrainte, du territoire italien et emportés en Allemagne après le 3 septembre 1943, donneront lieu à restitution.

3. Le rétablissement des droits de propriété ainsi que la restitution des biens italiens en Allemagne seront effectués conformément aux mesures qui seront arrêtées par les Puissances occupant l'Allemagne.

4. Sans préjudice de ces dispositions et de toutes autres qui seraient prises en faveur de l'Italie et des ressortissants italiens par les Puissances occupant l'Allemagne, l'Italie renonce, en son nom et au nom des ressortissants italiens, à toutes réclamations contre l'Allemagne et les ressortissants allemands, qui n'étaient pas réglées au 8 mai 1945, à l'exception de celles qui résultent de contrats et d'autres obligations qui étaient en vigueur ainsi que de droits qui étaient acquis avant le 1er septembre 1939. Cette renonciation sera considérée comme s'appliquant aux créances, à toutes les réclamations de caractère intergouvernemental relatives à des accords conclus au cours de la guerre et à toutes les réclamations portant sur des pertes ou des dommages survenus pendant la guerre.

5. L'Italie s'engage à prendre toutes les mesures nécessaires pour faciliter les transferts des biens allemands se trouvant en Italie, qui pourront être décidés par celles des Puissances occupant l'Allemagne qui ont le pouvoir de disposer des biens allemands se trouvant en Italie.

PARTIE VII

BIENS, DROITS ET INTERETS

SECTION I—BIENS DES NATIONS UNIES EN ITALIE

Article 78

1. Pour autant qu'elle ne l'a pas déjà fait, l'Italie rétablira tous les droits et intérêts légaux en Italie des Nations Unies et de leurs ressortissants, tels qu'ils existaient au 10 juin 1940, et restituera à ces Nations Unies et à leurs ressortissants tous les biens leur appartenant en Italie dans l'état où ils se trouvent actuellement.

2. Le Gouvernement italien restituera tous les biens, droits et intérêts visés au présent article, libres de toutes hypothèques et charges quelconques dont ils auraient pu être grevés du fait de la guerre, et sans que la restitution donne lieu à la perception d'aucune somme de la part du Gouvernement italien. Le Gouvernement italien annulera toutes mesures, y compris les mesures de saisie, de séquestre ou de contrôle, prises par lui à l'égard des biens des Nations Unies entre le 10 juin 1940 et la date d'entrée en vigueur du présent Traité. Dans le cas où le bien n'aurait pas été restitué dans les six mois à compter de la date d'entrée en vigueur du présent Traité, la demande devra être présentée aux autorités italiennes dans un délai maximum de douze mois à compter de cette même date, sauf dans les cas où le demandeur serait en mesure d'établir qu'il lui a été impossible de présenter sa demande dans ce délai.

3. Le Gouvernement italien annulera les transferts portant sur des biens, droits et intérêts de toute nature appartenant à des ressortissants des Nations Unies, lorsque ces transferts résultent de mesures de force ou de contrainte prises au cours de la guerre par les Gouvernements des Puissances de l'Axe ou par leurs organes.

4. *(a)* Le Gouvernement italien sera responsable de la remise en parfait état des biens restitués à des ressortissants des Nations Unies en vertu du paragraphe 1 du présent article. Lorsqu'un bien ne pourra être restitué ou que, du fait de la guerre, le ressortissant d'une Nation Unie aura subi une perte par suite d'une atteinte ou d'un dommage causé à un bien en Italie, le Gouvernement italien indemnisera le propriétaire en versant une somme en lires jusqu'à concurrence des deux tiers de la somme

nécessaire à la date du paiement, pour permettre au bénéficiaire, soit d'acheter un bien équivalent, soit de compenser la perte ou le dommage subi. En aucun cas, les ressortissants des Nations Unies ne devront être l'objet d'un traitement moins favorable en matière d'indemnité que le traitement accordé aux ressortissants italiens.

(b) Les ressortissants des Nations Unies qui détiennent directement ou indirectement des parts d'intérêts dans des sociétés ou associations qui ne possèdent pas la nationalité des Nations Unies, au sens du paragraphe 9 *(a)* du présent article, mais qui ont subi une perte par suite d'atteintes ou de dommages causés à leurs biens en Italie recevront une indemnité conformément à l'alinéa *(a)* ci-dessus. Cette indemnité sera calculée en fonction de la perte ou du dommage total subi par la société ou l'association, et son montant par rapport au total de la perte ou du dommage subi aura la même proportion que la part d'intérêts détenue par les dits ressortissants par rapport au capital global de la société ou association en question.

(c) L'indemnité sera versée, nette de tous prélèvements, impôts ou autres charges. Elle pourra être librement employée en Italie mais sera soumise aux règlements relatifs au contrôle des changes qui pourront, a un moment donné, être en vigueur en Italie.

(d) Le Gouvernement italien accordera aux ressortissants des Nations Unies une indemnité en lires, dans la même proportion que celle prévue à l'alinéa *(a)* ci-dessus pour compenser la perte ou les dommages qui résultent de mesures spéciales prises pendant la guerre à l'encontre de leurs biens et qui ne visaient pas les biens italiens. Cet alinéa ne s'applique pas à un manque à gagner.

5. Tous les frais raisonnables auxquels donnera lieu, en Italie, l'établissement des demandes, y compris l'évaluation des pertes et des dommages, seront à la charge du Gouvernement italien.

6. Les ressortissants des Nations Unies ainsi que leurs biens seront exemptés de tous impôts, contributions ou taxes exceptionnels, auxquels le Gouvernement italien ou une autorité italienne quelconque auraient soumis leurs avoirs en capital en Italie entre le 3 Septembre 1943 et la date d'entrée en vigueur du présent Traité, en vue de couvrir les dépenses résultant de la guerre ou celles qui ont été entraînées par l'entretien des forces d'occupation ou par les réparations à payer à l'une des Nations

Unies. Toutes les sommes qui auraient été ainsi perçues seront remboursées.

7. En dépit des transferts de territoires prévus par le présent Traité, l'Italie demeurera responsable des pertes ou des dommages causés, pendant la guerre, aux biens des ressortissants des Nations Unies dans les territoires cédés ou dans le Territoire Libre de Trieste. Les obligations contenues dans les paragraphes 3, 4, 5 et 6 du présent article incomberont également au Gouvernement italien à l'égard des biens des ressortissants des Nations Unies dans les territoires cédés et dans le Territoire Libre de Trieste, mais seulement dans la mesure où il n'en résultera pas de contradiction avec les dispositions du paragraphe 14 de l'annexe X et du paragraphe 14 de l'annexe XIV du présent Traité.

8. Le propriétaire des biens en question et le Gouvernement italien pourront conclure des arrangements qui se substitueront aux dispositions du présent article.

9. Aux fins du présent article:

(a) L'expression "ressortissants des Nations Unies" s'applique aux personnes physiques qui sont ressortissants de l'une quelconque des Nations Unies, ainsi qu'aux sociétés ou associations constituées sous le régime des lois de l'une des Nations Unies lors de l'entrée en vigueur du présent Traité, à condition que lesdites personnes physiques, sociétés ou associations aient déjà possédé ce statut le 3 septembre 1943, date de l'armistice avec l'Italie.

L'expression "ressortissants des Nations Unies" comprend également toutes les personnes physiques et les sociétés ou associations qui, aux termes de la législation en vigueur en Italie pendant la guerre, ont été traitées comme ennemis.

(b) Le terme "propriétaire" désigne le ressortissant d'une des Nations Unies, tel qu'il est défini à l'alinéa (*a*) ci-dessus, qui a un titre légitime au bien en question, et s'applique au successeur du propriétaire, à condition que ce successeur soit aussi ressortissant d'une des Nations Unies au sens de l'alinéa *(a)*. Si le successeur a acheté le bien lorsque celui-ci était déjà endommagé, le vendeur conservera ses droits à l'indemnisation résultant du présent article, sans que les obligations existant entre le vendeur et l'acquéreur, en vertu de la législation interne, en soient affectées.

(c) Le terme "biens" désigne tous les biens mobiliers ou immobiliers, corporels ou incorporels, y compris les droits de propriété industrielle,

littéraire et artistique, ainsi que tous droits ou intérêts de nature quelconque dans des biens. Sans préjudice des dispositions générales qui précèdent, les biens des Nations Unies et de leurs ressortissants comprennent tous les bâtiments de mer et de navigation intérieure avec leurs gréments et leurs équipements, qui appartenaient aux Nations Unies ou à leurs ressortissants ou étaient enregistrés sur le territoire de l'une des Nations Unies ou naviguaient sous le pavillon de l'une des Nations Unies, et qui postérieurement au 10 juin 1940, qu'ils se soient trouvés dans les eaux italiennes ou qu'ils y aient été amenés de force, furent soumis au contrôle des autorités italiennes en tant que biens ennemis, ou cessèrent d'être en Italie à la libre disposition des Nations Unies ou de leurs ressortissants, du fait de mesures de contrôle prises par les autorités italiennes en relation avec l'existence d'un état de guerre entre certaines des Nations Unies et l'Allemagne.

SECTION II—BIENS ITALIENS SITUÉS SUR LE TERRITOIRE DES PUISSANCES ALLIÉES ET ASSOCIÉES

Article 79

1. Chacune des Puissances Alliées ou Associées aura le droit de saisir, retenir ou liquider tous les biens, droits et intérêts qui, à la date d'entrée en vigueur du présent Traité, se trouvent sur son territoire et appartiennent à l'Italie ou à des ressortissants italiens, et de prendre toute autre disposition en ce qui concerne ces biens, droits et intérêts. Elle aura également le droit d'employer ces biens ou le produit de leur liquidation à telles fins qu'elle pourra désirer, à concurrence du montant de ses réclamations ou de celles de ses ressortissants contre l'Italie ou les ressortissants italiens (y compris les créances), qui n'auront pas été entièrement réglées en vertu d'autres articles du présent Traité. Tous les biens italiens ou le produit de leur liquidation en excédent du montant desdites réclamations seront restitués.

2. La liquidation des biens italiens et les mesures de disposition dont ils feront l'objet devront s'effectuer conformément à la législation de la Puissance Alliée ou Associée intéressée. En ce qui concerne lesdits biens,

le propriétaire italien n'aura pas d'autres droits que ceux que peut lui conférer la législation en question.

3. Le Gouvernement italien s'engage à indemniser les ressortissants italiens dont les biens seront saisis en vertu du présent article et auxquels ces biens ne seront pas restitués.

4. Il ne résulte du présent article aucune obligation, pour l'une quelconque des Puissances Alliées ou Associées, de restituer au Gouvernement ou aux ressortissants italiens des droits de propriété industrielle, ni de faire entrer ces droits dans le calcul des sommes qui pourront être retenues en vertu du paragraphe 1 du présent article. Le Gouvernement de chacune des Puissances Alliées ou Associées aura le droit d'imposer aux droits ou intérêts afférents à la propriété industrielle sur le territoire de cette Puissance Alliée ou Associée, acquis par le Gouvernement italien ou ses ressortissants avant l'entrée en vigueur du présent Traité, telles limitations, conditions ou restrictions que le Gouvernement de la Puissance Alliée ou Associée intéressée pourra considérer comme nécessaires dans l'intérêt national.

5. *(a)* Les câbles sous-marins italiens reliant des points situés en territoire yougoslave seront réputés propriété italienne en Yougoslavie, même si une certaine partie de ces câbles se trouve en dehors des eaux territoriales yougoslaves.

(b) Les câbles sous-marins italiens reliant un point situé sur le territoire d'une Puissance Alliée ou Associée et un point situé en territoire italien seront réputés propriété italienne au sens du présent article en ce qui concerne les installations terminales ou les parties de câbles se trouvant dans les eaux territoriales de cette Puissance Alliée ou Associée.

6. Les biens visés au paragraphe 1 du présent article seront considérés comme comprenant les biens italiens qui ont fait l'objet de mesures de contrôle en raison de l'état de guerre existant entre l'Italie et la Puissance Alliée ou Associée dans la juridiction de laquelle les biens sont situés, mais ne comprendront pas:

(a) Les biens du Gouvernement italien utilisés pour les besoins des missions diplomatiques ou consulaires;

(b) Les biens appartenant à des institutions religieuses ou à des institutions philanthropiques privées et servant exclusivement à des fins religieuses ou philanthropiques;

(c) Les biens des personnes physiques qui sont des ressortissants italiens et sont autorisées á résider, soit sur le territoire du pays où sont situés ces biens, soit sur le territoire de l'une quelconque des Nations Unies, autres que les biens italiens qui, à un moment quelconque au cours de la guerre, ont fait l'objet de mesures qui ne s'appliquaient pas d'une manière générale aux biens des ressortissants italiens résidant sur le territoire en question;

(d) Les droits de propriété nés depuis la reprise des relations commerciales et financières entre les Puissances Alliées et Associées et l'Italie, ou nés de transactions entre le Gouvernement d'une Puissance Alliée ou Associée et l'Italie depuis le 3 septembre 1943;

(e) Les droits de propriété littéraire et artistique;

(f) Les biens des ressortissants italiens, situés dans les territoires cédés, auxquels s'appliqueront les dispositions de l'annexe XIV;

(g) Exception faite des avoirs visés au paragraphe 2 *(b)* de la partie A et au paragraphe 1 de la partie D de l'article 74, les biens des personnes physiques résidant dans les territoires cédés ou dans le Territoire Libre de Trieste, qui n'exercent pas le droit d'option pour la nationalité italienne que leur confère le présent Traité, ainsi que les biens des sociétés ou associations dont le siège social est situé dans les territoires cédés ou dans le Territoire Libre de Trieste, à condition que ces sociétés ou associations ne soient ni la propriété de personnes résidant en Italie, ni contrôlées par elles. Dans les cas prévus au paragraphe 2 *(b)* de la partie A et au paragraphe 1 de la partie D de l'article 74, la question de l'indemnisation sera règlée conformément aux dispositions de la partie E de cet article.

SECTION III—DÉCLARATION DES PUISSANCES ALLIÉES ET ASSOCIÉES AU SUJET DE LEURS RÉCLAMATIONS

Article 80

Les Puissances Alliées et Associées déclarent que les droits qui leur sont attribués par les articles 74 et 79 du présent Traité couvrent toutes leurs réclamations et celles de leurs ressortissants pour pertes ou dommages résultant de faits de guerre y compris les mesures prises à la faveur de l'occupation de leur territoire, imputables à l'Italie et survenues en dehors du territoire italien, à l'exception cependant des réclamations fondées sur les articles 75 et 78.

SECTION IV—DETTES

Article 81

1. L'existence de l'état de guerre ne doit pas être considérée en soi comme affectant l'obligation d'acquitter les dettes pécuniaires résultant d'obligations et de contrats qui étaient en vigueur et de droits qui étaient acquis avant l'existence de l'état de guerre, dettes qui étaient devenues exigibles avant l'entrée en vigueur du présent Traité et qui sont dues, soit par le Gouvernement ou les ressortissants italiens au Gouvernement ou aux ressortissants de l'une des Puissances Alliées ou Associées, soit par le Gouvernement ou les ressortissants d'une des Puissances Alliées ou Associées au Gouvernement ou aux ressortissants italiens.

2. Sauf disposition expressément contraire du présent Traité, aucune clause de ce Traité ne devra être interprétée comme affectant les rapports de débiteurs à créanciers résultant de contrats conclus avant la guerre soit par le Gouvernement soit par des ressortissants italiens.

PARTIE VIII

RELATIONS ECONOMIQUES GENERALES

Article 82

1. En attendant la conclusion de traités ou d'accords commerciaux entre l'une quelconque des Nations Unies et l'Italie, le Gouvernement italien devra, pendant les dix-huit mois qui suivront l'entrée en vigueur du présent Traité, accorder à chacune des Nations Unies qui, en fait, accordent par voie de réciprocité un traitement analogue à l'Italie dans ces domaines, le traitement suivant:

(a) Pour tout ce qui concerne les droits et redevances à l'importation ou à l'exportation, l'imposition à l'intérieur du pays des marchandises importées, et tous les règlements qui s'y rapportent, les Nations Unies bénéficieront de la clause inconditionnelle de la nation la plus favorisée;

(b) L'Italie ne pratiquera, à tous autres égards, aucune discrimination arbitraire au détriment des marchandises en provenance ou à destination

du territoire d'une Nation Unie par rapport aux marchandises analogues en provenance ou à destination du territoire de toute autre Nation Unie ou de tout autre pays étranger;

(c) Les ressortissants des Nations Unies y compris les personnes morales bénéficieront du traitement national et de celui de la nation la plus favorisée pour tout ce qui a trait au commerce, à l'industrie, à la navigation et aux autres formes d'activité commerciale en Italie. Ces dispositions ne s'appliqueront pas à l'aviation commerciale;

(d) L'Italie n'accordera à aucun pays de droit exclusif ou préférentiel en ce qui concerne l'exploitation des services aériens commerciaux pour les transports internationaux; elle offrira des conditions d'égalité à toutes les Nations Unies pour l'obtention de droits en matière de transports aériens commerciaux internationaux sur le territoire italien, y compris le droit d'atterrir à des fins de ravitaillement et de réparation, et, en ce qui concerne l'exploitation des services aériens commerciaux pour les transports internationaux, elle accordera à toutes les Nations Unies, suivant le principe de la réciprocité et de la non-discrimination, le droit de survoler le territoire italien sans escale. Ces dispositions n'affecteront pas les intérêts de la défense nationale de l'Italie.

2. Les engagements ci-dessus pris par l'Italie doivent s'entendre sous réserve des exceptions usuelles des traités de commerce conclus par l'Italie avant la guerre; les dispositions relatives à la réciprocité accordée par chacune des Nations Unies doivent s'entendre sous réserve des exceptions usuelles des traités de commerce conclus par celle-ci.

PARTIE IX

REGLEMENT DES DIFFERENDS

Article 83

1. Tous les différends qui pourront s'élever à propos de l'application des articles 75 et 78, ainsi que des annexes XIV, XV, XVI et XVII, partie B, du présent Traité, seront soumis à une commission de conciliation, composée d'un représentant du Gouvernement de la Nation Unie intéressée et d'un représentant du Gouvernement italien, agissant sur un

pied d'égalité. Si un règlement n'est pas intervenu dans les trois mois qui suivront la date à laquelle le différend a été soumis à la commission de conciliation, l'un ou l'autre Gouvernement pourra demander l'adjonction à la commission d'un tiers membre choisi, d'un commun accord, entre les deux Gouvernements, parmi les ressortissants d'un Etat tiers. A défaut d'accord dans un délai de deux mois, entre les deux Gouvernements, sur le choix de ce membre, ces Gouvernements s'adresseront aux Ambassadeurs des Etats-Unis d'Amérique, de France, du Royaume-Uni et de l'Union Soviétique, qui désigneront le tiers membre de la commission. Si les Ambassadeurs ne parviennent pas à se mettre d'accord dans le délai d'un mois sur la désignation du tiers membre, l'une ou l'autre partie pourra demander au Secrétaire Général de l'Organisation des Nations Unies de procéder à cette désignation.

2. Lorsqu'une commission de conciliation sera constituée en application du paragraphe 1, elle aura compétence pour connaître de tous les différends qui pourront s'élever par la suite entre la Nation Unie intéressée et l'Italie au sujet de l'application ou de l'interprétation des articles 75 et 78, ainsi que des annexes XIV, XV, XVI et XVII, partie B, du présent Traité, et elle remplira les fonctions qui lui sont dévolues par ces dispositions.

3. Chaque commission de conciliation établira elle-même sa procédure, en adoptant des règles conformes à la justice et à l'équité.

4. Chaque Gouvernement paiera les honoraires du membre de la commission de conciliation qu'il nomme et de tout agent qu'il pourra désigner pour le représenter devant la commission. Les honoraires du tiers membre seront fixés par accord spécial entre les Gouvernements intéressés, et ces honoraires, ainsi que les dépenses communes de chaque commission, seront payés par moitié par les deux Gouvernements.

5. Les parties s'engagent à ce que leurs autorités fournissent directement à la commission de conciliation toute l'aide qui sera en leur pouvoir.

6. La décision de la majorité des membres de la commission sera considérée comme décision de la commission et acceptée par les parties comme définitive et obligatoire.

PARTIE X

CLAUSES ECONOMIQUES DIVERSES

Article 84

Les articles 75, 78, 82 et l'annexe XVII du présent Traité s'appliqueront aux Puissances Alliées et Associées et à celles des Nations Unies qui ont rompu les relations diplomatiques avec l'Italie, ou avec qui l'Italie a rompu les relations diplomatiques. Ces articles et cette annexe s'appliqueront également à l'Albanie et à la Norvège.

Article 85

Les dispositions des annexes VIII, X, XIV, XV, XVI et XVII ainsi que celles des autres annexes seront considérées comme faisant partie intégrante du présent Traité, et auront la même valeur et les mêmes effets.

PARTIE XI

CLAUSES FINALES

Article 86

1. Pendant une période qui n'excédera pas dix-huit mois à partir de l'entrée en vigueur du présent Traité, les Ambassadeurs des Etats-Unis d'Amérique, de France, du Royaume-Uni et de l'Union Soviétique à Rome, agissant de concert, représenteront les Puissances Alliées et Associées pour traiter avec le Gouvernement italien de toutes questions relatives à l'exécution et à l'interprétation du présent Traité.

2. Les Quatre Ambassadeurs donneront au Gouvernement italien les conseils, avis techniques et éclaircissements qui pourront être nécessaires pour assurer l'exécution rapide et efficace du présent Traité, aussi bien dans sa lettre que dans son esprit.

3. Le Gouvernement italien fournira aux Quatre Ambassadeurs toutes les informations nécessaires et toute l'aide dont ils pourront avoir besoin dans l'accomplissement des tâches qui leur sont dévolues par le présent Traité.

Article 87

1. Exception faite des cas pour lesquels une autre procédure est

expressément prévue par un article du présent Traité, tout différend relatif à l'interprétation ou à l'exécution de ce Traité, qui n'a pas été réglé par voie de négociations diplomatiques directes, sera soumis aux Quatre Ambassadeurs, agissant comme il est prévu à l'article 86, mais, en pareil cas, les Ambassadeurs ne seront pas tenus par les délais fixés dans ledit article. Tout différend de cette nature qu'ils n'auraient pas encore réglé dans un délai de deux mois sera, sauf si les parties au différend conviennent l'une et l'autre d'un autre mode de règlement, soumis, à la requête de l'une ou l'autre des parties, à une commission composée d'un représentant de chaque partie et d'un tiers membre choisi d'un commun accord entre les deux parties parmi les ressortissants d'un pays tiers. A défaut d'accord dans un délai d'un mois entre les deux parties au sujet de la désignation de ce tiers membre, l'une ou l'autre partie pourra demander au Secrétaire Général des Nations Unies de procéder à cette désignation.

2. La décision prise par la majorité des membres de la commission sera considérée comme décision de la commission et acceptée par les parties comme définitive et obligatoire.

Article 88

1. Tout membre de l'Organisation des Nations Unies, en guerre avec l'Italie et qui n'est pas signataire du présent Traité, ainsi que l'Albanie, peut accéder au Traité et sera considéré, dès son accession, comme Puissance Associée pour l'application du Traité.

2. Les instruments d'accession seront déposés près le Gouvernement de la République Française et prendront effet dès leur dépôt.

Article 89

Les dispositions du présent Traité ne conféreront aucun droit ni bénéfice à aucun Etat désigné dans le préambule du Traité comme l'une des Puissances Alliées ou Associées ou à ses nationaux, jusqu'à ce que cet Etat devienne partie au Traité par le dépôt de son instrument de ratification.

Article 90

Le présent Traité, dont les textes français, anglais et russe feront foi, devra être ratifié par les Puissances Alliées et Associées. Il devra également être ratifié par l'Italie. Il entrera en vigueur immédiatement après le dépôt des ratifications par les Etats-Unis d'Amérique, la France, le Royaume-

Uni de Grande-Bretagne et d'Irlande du Nord et l'Union des Républiques Soviétiques Socialistes. Les instruments de ratification seront, dans le plus bref délai possible, déposés près le Gouvernement de la République Française.

En ce qui concerne chacune des Puissances Alliées ou Associées dont l'instrument de ratification sera déposé ultérieurement, le Traité entrera en vigueur à la date du dépôt. Le présent Traité sera déposé dans les archives du Gouvernement de la République Française, qui en remettra à chacun des Etats signataires une copie certifiée conforme.

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[1] Nations Unies, *Recueil des Traités*, volume 50.

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ANNEXE I

CARTES

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ANNEXE II

FRONTIERE FRANCO-ITALIENNE

Description détaillée des sections de la frontière correspondant aux modifications prévues à l'article 2

Col du Petit Saint-Bernard

Référence: Carte au 20.000° — Ste Foy Tarentaise N^{os} 1-2

La nouvelle frontière suit un tracé qui débouche de l'arête rocheuse de Lancebranlette, puis, descendant vers l'est, suit la ligne de partage des eaux jusqu'au point coté 2180, d'où il passe à la Colonna Joux (2188). De là, suivant toujours la ligne de partage des eaux, le tracé remonte sur la Costa del Belvedere dont il suit les affleurements rocheux, gravit le Mt Belvedere dont il contourne le sommet, laissant ce dernier en territoire français à 120 mètres de la frontière, et rejoint par les cotes 2570, 2703, la Bella Valetta et la cote 2746, l'ancienne frontière au Mt Valaisan.

Plateau du Mont Cenis

Référence: Cartes au 20.000° de Lanslebourg N°ˢ 5-6 et 7-8 et de Mont d'Ambin N°ˢ 1-2

La nouvelle frontière suit un tracé qui quitte l'ancienne frontière au Mt Tour, suit vers l'ouest la limite administrative figurant sur la carte, s'engage dans le T. Vitoun dès qu'il le rencontre sur sa branche nord et descend son cours jusqu'à la Rocca della Toretta.

Longeant ensuite la ligne d'affleurements rocheux, il aboutit au torrent venant de l'Alpe Lamet et descend avec lui jusqu'à la base de l'escarpement rocheux qu'il longe pendant 800 m. environ jusqu'au thalweg en un point situé à environ 200 m. au nord de la cote 1805.

Il chemine ensuite au sommet des arrachements qui dominent Ferrera Cenisio à 300 m. environ et continuant vers l'ouest, il rencontre la route qui contourne à l'est le Rne Paradiso à 400 m. à l'ouest de la boucle (1854) pour l'abandonner aussitôt et s'infléchir en direction du sud.

Il coupe la route de Bar Cenisia à 100 m. environ du sud-est du refuge 5, traverse le thalweg en direction du lac S. Giorgio, suit sensiblement la courbe 1900 jusqu'à hauteur de la cote 1907, vient longer au sud le lac d'Arpon et rejoint l'arête rocheuse sur laquelle il se maintient en direction du sud-ouest jusqu'au confluent des torrents issus du glacier du Bard (Ghiaccajo di Bard), en un point situé à 1400 m. environ du sud-ouest du lac d'Arpon.

De là, s'infléchissant vers le sud, il suit approximativement la courbe 2500, passe à la cote 2579 puis, longeant la courbe 2600, il arrive au lac della Vecchia et vient retrouver, à la limite administrative marquée sur la carte à 700 m. environ du sud-est du lac, le chemin de Pso d'Avanza qui le conduit le long des escarpements rocheux à l'ancienne frontière, à mi-distance entre le Col de la Vecchia et le Col de Clapier.

ANNEXE XI

Déclaration commune des Gouvernements des Etats-Unis d'Amérique, de la France, du Royaume-Uni et de l'Union Soviétique au sujet des possessions territoriales italiennes en Afrique

(voir article 23)

1. Les Gouvernements des Etats-Unis d'Amérique, de la France, du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et de l'Union des Républiques Soviétiques Socialistes conviennent de déterminer, par une décision prise en commun, dans un délai d'un an à partir de l'entrée en vigueur du Traité de Paix avec l'Italie portant la date du 10 février 1947, le sort définitif des possessions territoriales de l'Italie en Afrique, sur lesquelles l'Italie renonce à tous ses droits et titres en vertu de l'article 23 du présent Traité.

2. Les Quatre Puissances régleront le sort définitif des territoires en question et procéderont aux ajustements appropriés de leurs frontières, en tenant compte des aspirations et du bien-être des habitants, ainsi que des exigences de la paix et de la sécurité, et en prenant en considération les vues des autres Gouvernements intéressés.

ANNEXE XII

(voir article 56)

Les noms des bâtiments qui figurent à la présente annexe sont ceux qui étaient en usage dans la Marine italienne le 1er juin 1946.

A. Liste des bâtiments que l'Italie pourra conserver

Principaux bâtiments de combat

Bâtiments de ligne	Andrea Doria Caio Duilio
Croiseurs	Luigi di Savoia Duca degli Abruzzi Giuseppe Garibaldi Raimondo Montecuccoli Luigi Cadorna
Destroyers	Carabiniere Granatiere Grecale Nicoloso da Recco
Torpilleurs	Giuseppe Cesare Abba Aretusa Calliope Giacinto Carini Cassiopea Clio Nicola Fabrizi Ernesto Giovannini Libra Monzambano Antonio Mosto Orione

No. 747. TREATY[1] OF PEACE WITH ITALY. SIGNED AT PARIS, ON 10 FEBRUARY 1947

The Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, China, France, Australia, Belgium, the Byelorussian Soviet Socialist Republic, Brazil, Canada, Czechoslovakia, Ethiopia, Greece, India, the Netherlands, New Zealand, Poland, the Ukrainian Soviet Socialist Republic, the Union of South Africa, and the People's Federal Republic of Yugoslavia, hereinafter referred to as "the Allied and Associated Powers", of the one part,

and Italy, of the other part:

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[1] Came into force on 15 September 1947 upon the deposit with the Government of the French Republic of the instruments of ratification by the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and France, in accordance with Article 90.

List of States which have deposited instruments of ratification or accession with the Government of the French Republic and dates of deposit thereof:

United States of America	15 September 1947	Ratification
France	15 September 1947	Ratification
United Kingdom	15 September 1947	Ratification
U.S.S.R.	15 September 1947	Ratification
Yugoslavia*	15 September 1947	Ratification
Italy	15 September 1947	Ratification
India**	15 September 1947	Ratification
Canada	15 September 1947	Ratification
Czechoslovakia	14 October 1947	Ratification
Albania	20 October 1947	Accession
Greece	28 October 1947	Ratification
Union of South Africa	4 November 1947	Ratification
Ethiopia	6 November 1947	Ratification
China	24 November 1947	Ratification
New Zealand	24 December 1947	Ratification
Poland	4 February 1948	Ratification
Mexico	10 April 1948	Accession
Australia	9 July 1948	Ratification
Belgium	4 September 1948	Ratification
Brazil	4 January 1949	Ratification
Netherlands	7 February 1949	Ratification

* Yugoslavia deposited instruments of ratification on 4 September 1947.

** The Government of Pakistan has informed the French Government that it considers the ratification deposited by the Indian Government as binding on its country.

Whereas Italy under the Fascist regime became a party to the Tripartite Pact with Germany and Japan, undertook a war of aggression and thereby provoked a state of war with all the Allied and Associated Powers and with other United Nations, and bears her share of responsibility for the war; and

Whereas in consequence of the victories of the Allied forces, and with the assistance of the democratic elements of the Italian people, the Fascist regime in Italy was overthrown on July 25, 1943, and Italy, having surrendered unconditionally, signed terms of Armistice on September 3 and 29 of the same year; and

Whereas after the said Armistice Italian armed forces, both of the Government and of the Resistance Movement, took an active part in the war against Germany, and Italy declared war on Germany as from October 13, 1943, and thereby became a co-belligerent against Germany; and

Whereas the Allied and Associated Powers and Italy are desirous of concluding a treaty of peace which, in conformity with the principles of justice, will settle questions still outstanding as a result of the events hereinbefore recited and will form the basis of friendly relations between them, thereby enabling the Allied and Associated Powers to support Italy's application to become a member of the United Nations and also to adhere to any convention concluded under the auspices of the United Nations;

Have therefore agreed to declare the cessation of the state of war and for this purpose to conclude the present Treaty of Peace, and have accordingly appointed the undersigned Plenipotentiaries who, after presentation of their full powers, found in good and due form, have agreed on the following provisions:

PART I

TERRITORIAL CLAUSES

SECTION I—FRONTIERS

Article 1

The frontiers of Italy shall, subject to the modifications set out in Articles 2, 3, 4, 11 and 22, be those which existed on January 1, 1938. These frontiers are traced on the maps[1] attached to the present Treaty (Annex I). In case of a discrepancy between the textual description of the frontiers and the maps, the text shall be deemed to be authentic.

Article 2

The frontier between Italy and France, as it existed on January 1, 1938, shall be modified as follows:

1. *Little St. Bernard Pass*

The frontier shall follow the watershed, leaving the present frontier at a point about 2 kilometers northwest of the Hospice, crossing the road about 1 kilometer northeast of the Hospice and rejoining the present frontier about 2 kilometers southeast of the Hospice.

2. *Mont Cenis Plateau*

The frontier shall leave the present frontier about 3 kilometers northwest of the summit of Rochemelon, cross the road about 4 kilometers southeast of the Hospice and rejoin the present frontier about 4 kilometers northeast of Mont d'Amhin.

3. *Mont Thabor-Chaberton*

(a) In the Mont Thabor area, the frontier shall leave the present frontier about 5 kilometers to the east of Mont Thabor and run southeastward to rejoin the present frontier about 3 kilometers west of the Pointe de Charra.

(b) In the Chaberton area, the frontier shall leave the present frontier about 3 kilometers north-northwest of Chaberton, which it skirts on the east, and shall cross the road about 1 kilometer from the present frontier, which it rejoins about 2 kilometers southeast of the village of Montgenevre.

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[1] United Nations, *Treaty Series*, Volume 50.

4. *Upper Valleys of the Tinée, Vesubie and Roya*

The frontier shall leave the present frontier at Colla Longa, shall follow along the watershed by way of Mont Clapier, Col de Tenda, Mont Marguareis, whence it shall run southward by way of Mont Saccarello, Mont Vacchi, Mont Pietravecchia, Mont Lega and shall reach a point approximately 100 meters from the present frontier near Colla Pegairolle, about 5 kilometers to the northeast of Breil; it then shall run in a southwesterly direction, and shall rejoin the existing frontier approximately 100 meters southwest of Mont Mergo.

5. The detailed description of those sections of the frontier to which the modifications set out in paragraphs 1, 2, 3 and 4 above apply, is contained in Annex II to the present Treaty and the maps to which this description refers form part of Annex I.

Article 3

The frontier between Italy and Yugoslavia shall be fixed as follows:

(i) The new frontier follows a line starting from the junction of the frontiers of Austria, Italy and Yugoslavia as they existed on January 1, 1938, and proceeding southward along the 1938 frontier between Yugoslavia and Italy to the junction of that frontier with the administrative boundary between the Italian provinces of Friuli (Udine) and Gorizia;

(ii) From this point the line coincides with the said administrative boundary up to a point approximately 0.5 kilometer north of the village of Mernico in the valley of the Iudrio;

(iii) Leaving the administrative boundary between the Italian provinces of Friuli and Gorizia at this point, the line extends eastward to a point approximately 0.5 kilometer west of the village of Vercoglia di Cosbana and thence southward between the valleys of the Quarnizzo and the Cosbana to a point approximately 1 kilometer southwest of the village of Fleana, bending so as to cut the river Recca at a point approximately 1.5 kilometers east of the Iudrio and leaving on the east the road from Cosbana via Nebola to Castel Dobra;

(iv) The line then continues to the southeast passing due south of the road between points 111 and 172, then south of the road from Vipulzano to Uclanzi passing points 57 and 122, then crossing the latter road about 100 meters east of point 122 and curving north in the direction of a point situated 350 meters southeast of point 266;

(v) Passing about 0.5 kilometer north of the village of San Floriano, the line extends eastward to Monte Sabotino (point 610), leaving to the north the village of Poggio San Valentino;

(vi) From Monte Sabotino the line extends southward, crosses the Isonzo (Soca) river at the town of Salcano, which it leaves in Yugoslavia, and runs immediately to the west of the railway line from Canale d'Isonzo to Montespino to a point about 750 meters south of the Gorizia-Aisovizza road;

(vii) Departing from the railway, the line then bends southwest leaving in Yugoslavia the town of San Pietro and in Italy the Hospice and the road bordering it and, some 700 meters from the station of Gorizia S. Marco, crosses the railway connection between the above railway and the Sagrado-Cormons railway, skirts the Gorizia cemetery, which is left in Italy, passes between Highway No. 55 from Gorizia to Trieste, which highway is left in Italy, and the crossroads at point 54, leaving in Yugoslavia the towns of Vertoiba and Merna, and reaches a point located approximately at point 49;

(viii) Thence the line continues in a southerly direction across the Karst plateau, approximately 1 kilometer east of Highway No. 55, leaving on the east the village of Opacchiasella and on the west the village of Iamiano;

(ix) From a point approximately 1 kilometer east of Iamiano, the line follows the administrative boundary between the provinces of Gorizia and Trieste as far as a point approximately 2 kilometers northeast of the village of San Giovanni and approximately 0.5 kilometer northwest of point 208, forming the junction of the frontiers of Yugoslavia, Italy and the Free Territory of Trieste.

The map to which this description refers forms part of Annex I.

Article 4

The frontier between Italy and the Free Territory of Trieste shall be fixed as follows:

(i) The line starts from a point on the administrative boundary between the provinces of Gorizia and Trieste approximately 2 kilometers northeast of the village of San Giovanni and approximately 0.5 kilometer northwest of point 208, forming the junction of the frontiers of Yugoslavia, Italy and the Free Territory of Trieste, and runs southwestward to a point adjacent to Highway No. 14 and approximately 1 kilometer northwest of the junction between Highways Nos. 55 and 14, respectively running from Gorizia and Monfalcone to Trieste;

(ii) The line then extends in a southerly direction to a point, in the Gulf of Panzano, equidistant from Punta Sdobba at the mouth of the Isonzo (Soca) river and Castello Vecchio at Duino, about 3.3 kilometers south from the point where it departs from the coastline approximately 2 kilometers northwest of the town of Duino;

(iii) The line then reaches the high seas by following a line placed equidistant from the coastlines of Italy and the Free Territory of Trieste.

The map to which this description refers forms part of Annex I.

Article 5

1. The exact line of the new frontiers laid down in Articles 2, 3, 4 and 22 of the present Treaty shall be determined on the spot by Boundary Commissions composed of the representatives of the two Governments concerned.

2. The Commissions shall begin their work immediately on the coming into force of the present Treaty, and shall complete it as soon as possible and in any case within a period of six months.

3. Any questions which the Commissions are unable to agree upon will be referred to the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France, acting as provided in Article 86, for final settlement by such methods as they may determine, including, where necessary, the appointment of an impartial third Commissioner.

4. The expenses of the Boundary Commissions will be borne in equal parts by the two Governments concerned.

5. For the purpose of determining on the spot the exact frontier laid down in Articles 3, 4 and 22, the Commissioners shall be allowed to depart by 0.5 kilometer from the line laid down in the present Treaty in order to adjust the frontier to local geographical and economic conditions, provided that no village or town of more than 500 inhabitants, no important railroads or highways, and no major power or water supplies are placed under a sovereignty other than that resulting from the delimitations laid down in the present Treaty.

SECTION II—FRANCE (Special Clauses)

Article 6

Italy hereby cedes to France in full sovereignty the former Italian territory situated on the French side of the Franco-Italian frontier defined in Article 2.

Article 7

The Italian Government shall hand over to the French Government all archives, historical and administrative, prior to 1860, which concern the territory ceded to France under the Treaty of March 24, 1860,[1] and the Convention of August 23, 1860.[2]

Article 8

1. The Italian Government shall co-operate with the French Government for the possible establishment of a railway connection between Briançon and Modane, via Bardonnèche.

2. The Italian Government shall authorize, free of customs duty and inspection, passport and other such formalities, the passenger and freight railway traffic travelling on the connection thus established, through Italian territory, from one point to another in France, in both directions; and shall take all necessary measures to ensure that the French trains using the said connection are allowed, under the same conditions, to pass duty free and without unjustifiable delay.

3. The necessary arrangements shall be concluded in due course between the two Governments.

Article 9

1. *Plateau of Mont Cenis*

In order to secure to Italy the same facilities as Italy enjoyed in respect of hydro-electric power and water supply from the Lake of Mont Cenis before cession of this district to France, the latter shall give Italy under a bilateral agreement the technical guarantees set out in Annex III.

2. *The Tenda-Briga District*

In order that Italy shall not suffer any diminution in the supplies of electric power which Italy has drawn from sources existing in the Tenda-Briga district before its cession to France, the latter shall give Italy under a bilateral agreement the technical guarantees set out in Annex III.

SECTION III—AUSTRIA (Special Clauses)

Article 10

1. Italy shall enter into or confirm arrangements with Austria to guarantee free movement of passenger and freight traffic between the North and East Tyrol.

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[1] De Martens, *Nouveau Recueil général de Traités*, tome XVI, partie II, page 539.

[2] De Martens, *Nouveau Recueil général de Traités*, tome XVII, partie II, page 22.

2. The Allied and Associated Powers have taken note of the provisions (the text of which is contained in Annex IV) agreed upon by the Austrian and Italian Governments on September 5, 1946.

SECTION IV—PEOPLE'S FEDERAL REPUBLIC OF YUGOSLAVIA

(Special Clauses)

Article 11

1. Italy hereby cedes to Yugoslavia in full sovereignty the territory situated between the new frontiers of Yugoslavia as defined in Articles 3 and 22 and the Italo-Yugoslav frontier as it existed on January 1, 1938, as well as the commune of Zara and all islands and adjacent islets lying within the following areas:

(a) The area bounded:

On the north by the parallel of 42° 50′ N.;
On the south by the parallel of 42° 42′ N.;
On the east by the meridian of 17° 10′ E.;
On the west by the meridian of 16° 25′ E.;

(b) The area bounded:

On the north by a line passing through the Porto del Quieto, equidistant from the coastline of the Free Territory of Trieste and Yugoslavia, and thence to the point 45° 15′ N., 13° 24′ E.;
On the south by the parallel 44° 23′ N.;
On the west by a line connecting the following points:
1) 45° 15′ N.—13° 24′ E.;
2) 44° 51′ N.—13° 37′ E.;
3) 44° 23′ N.—14° 18′ 30″ E.
On the east by the west coast of Istria, the islands and the mainland of Yugoslavia.

A chart of these areas is contained in Annex I.

2. Italy hereby cedes to Yugoslavia in full sovereignty the island of Pelagosa and the adjacent islets.

The island of Pelagosa shall remain demilitarised.

Italian fishermen shall enjoy the same rights in Pelagosa and the surrounding waters as were there enjoyed by Yugoslav fishermen prior to April 6, 1941.

Article 12

1. Italy shall restore to Yugoslavia all objects of artistic, historical, scientific, educational or religious character (including all deeds, manuscripts, documents and bibliographical material) as well as administrative archives (files, registers, plans and documents of any kind) which, as the result of the Italian occupation, were removed between November 4, 1918, and March 2, 1924, from the territories ceded to Yugoslavia under the treaties signed in Rapallo on November 12, 1920,[1] and in Rome on January 27, 1924.[2] Italy shall also restore all objects belonging to those territories and falling into the above categories, removed by the Italian Armistice Mission which operated in Vienna after the first World War.

2. Italy shall deliver to Yugoslavia all objects having juridically the character of public property and coming within the categories in paragraph 1 of the present Article, removed since November 4, 1918, from the territory which under the present Treaty is ceded to Yugoslavia, and those connected with the said territory which Italy received from Austria or Hungary under the Peace Treaties signed in St. Germain on September 10, 1919, and in the Trianon on June 4, 1920, and under the convention between Austria and Italy, signed in Vienna on May 4, 1920.[3]

3. If, in particular cases, Italy is unable to restore or hand over to Yugoslavia the objects coming under paragraphs 1 and 2 of this Article, Italy shall hand over to Yugoslavia objects of the same kind as, and of approximately equivalent value to, the objects removed, in so far as such objects are obtainable in Italy.

Article 13

The water supply for Gorizia and its vicinity shall be regulated in accordance with the provisions of Annex V.

SECTION V—GREECE (Special Clause)

Article 14

1. Italy hereby cedes to Greece in full sovereignty the Dodecanese Islands indicated hereafter, namely Stampalia (Astropalia), Rhodes (Rhodos), Calki (Kharki), Scarpanto, Casos (Casso), Piscopis (Tilos), Misiros (Nisyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi), Cos (Kos) and Castellorizo, as well as the adjacent islets.

2. These islands shall be and shall remain demilitarised.

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[1] League of Nations, *Treaty Series*, Volume XVIII, page 387.

[2] League of Nations, *Treaty Series*, Volume XXIV, page 31.

[3] De Martens, *Nouveau Recueil général de Traités*, troisième série, tome XIX, page 682.

3. The procedure and the technical conditions governing the transfer of these islands to Greece will be determined by agreement between the Governments of the United Kingdom and Greece and arrangements shall be made for the withdrawal of foreign troops not later than 90 days from the coming into force of the present Treaty.

PART II

POLITICAL CLAUSES

SECTION I—GENERAL CLAUSES

Article 15

Italy shall take all measures necessary to secure to all persons under Italian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.

Article 16

Italy shall not prosecute or molest Italian nationals, including members of the armed forces, solely on the ground that during the period from June 10, 1940, to the coming into force of the present Treaty, they expressed sympathy with or took action in support of the cause of the Allied and Associated Powers.

Article 17

Italy, which, in accordance with Article 30 of the Armistice Agreement, has taken measures to dissolve the Fascist organizations in Italy, shall not permit the resurgence on Italian territory of such organizations, whether political, military or semi-military, whose purpose it is to deprive the people of their democratic rights.

Article 18

Italy undertakes to recognize the full force of the Treaties of Peace with Roumania, Bulgaria, Hungary and Finland and other agreements or arrangements which have been or will be reached by the Allied and Associated Powers in respect of Austria, Germany and Japan for the restoration of peace.

SECTION II — NATIONALITY. CIVIL AND POLITICAL RIGHTS

Article 19

1. Italian citizens who were domiciled on June 10, 1940, in territory transferred by Italy to another State under the present Treaty, and their children born after that date, shall, except as provided in the following paragraph, become citizens with full civil and political rights of the State to which the territory is transferred, in accordance with legislation to that effect to be introduced by that State within three months from the coming into force of the present Treaty. Upon becoming citizens of the State concerned they shall lose their Italian citizenship.

2. The Government of the State to which the territory is transferred shall, by appropriate legislation within three months from the coming into force of the present Treaty, provide that all persons referred to in paragraph 1 over the age of eighteen years (or married persons whether under or over that age) whose customary language is Italian, shall be entitled to opt for Italian citizenship within a period of one year from the coming into force of the present Treaty. Any person so opting shall retain Italian citizenship and shall not be considered to have acquired the citizenship of the State to which the territory is transferred. The option of the husband shall not constitute an option on the part of the wife. Option on the part of the father, or, if the father is not alive, on the part of the mother, shall, however, automatically include all unmarried children under the age of eighteen years.

3. The State to which the territory is transferred may require those who take advantage of the option to move to Italy within a year from the date when the option was exercised.

4. The State to which the territory is transferred shall, in accordance with its fundamental laws, secure to all persons within the territory, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.

Article 20

1. Within a period of one year from the coming into force of the present Treaty, Italian citizens over 18 years of age (or married persons whether under or over that age), whose customary language is one of the Yugoslav

languages (Serb, Croat or Slovene), and who are domiciled on Italian territory may, upon filing a request with a Yugoslav diplomatic or consular representative in Italy, acquire Yugoslav nationality if the Yugoslav authorities accept their request.

2. In such cases, the Yugoslav Government will communicate to the Italian Government through the diplomatic channel lists of the persons who have thus acquired Yugoslav nationality. The persons mentioned in such lists will lose their Italian nationality on the date of such official communication.

3. The Italian Government may require such persons to transfer their residence to Yugoslavia within a period of one year from the date of such official communication.

4. For the purposes of this Article, the rules relating to the effect of options on wives and on children, set forth in Article 19, paragraph 2, shall apply.

5. The provisions of Annex XIV, paragraph 10 of the present Treaty, applying to the transfer of properties belonging to persons who opt for Italian nationality, shall equally apply to the transfer of properties belonging to persons who opt for Yugoslav nationality under this Article.

SECTION III—FREE TERRITORY OF TRIESTE

Article 21

1. There is hereby constituted the Free Territory of Trieste, consisting of the area lying between the Adriatic Sea and the boundaries defined in Articles 4 and 22 of the present Treaty. The Free Territory of Trieste is recognized by the Allied and Associated Powers and by Italy, which agree that its integrity and independence shall be assured by the Security Council of the United Nations.

2. Italian sovereignty over the area constituting the Free Territory of Trieste, as above defined, shall be terminated upon the coming into force of the present Treaty.

3. On the termination of Italian sovereignty, the Free Territory of Trieste shall be governed in accordance with an instrument for a provisional regime drafted by the Council of Foreign Ministers and approved by the Security Council. This Instrument shall remain in force until such date as

the Security Council shall fix for the coming into force of the Permanent Statute which shall have been approved by it. The Free Territory shall thenceforth be governed by the provisions of such Permanent Statute. The texts of the Permanent Statute and of the Instrument for the Provisional Regime are contained in Annexes VI and VII.

4. The Free Territory of Trieste shall not be considered as ceded territory within the meaning of Article 19 and Annex XIV of the present Treaty.

5. Italy and Yugoslavia undertake to give to the Free Territory of Trieste the guarantees set out in Annex IX.

Article 22

The frontier between Yugoslavia and the Free Territory of Trieste shall be fixed as follows:

(i) The line starts from a point on the administrative boundary between the provinces of Gorizia and Trieste, approximately 2 kilometers northeast of the village of San Giovanni and approximately 0.5 kilometer northwest of point 208, forming the junction of the frontiers of Yugoslavia, Italy and the Free Territory of Trieste, and follows this administrative boundary as far as Monte Lanaro (point 546); thence it extends southeastward as far as Monte Cocusso (point 672) through point 461, Meducia (point 475), Monte dei Pini (point 476) and point 407, crossing Highway No. 58, from Trieste to Sesana, about 3.3 kilometers to the southwest of this town, and leaving the villages of Vogliano and Orle to the east, and at approximately 0.4 kilometer to the west, the village of Zolla.

(ii) From Monte Cocusso, the line, continuing southeastward leaving the village of Grozzana to the west, reaches Monte Goli (point 621), then turning southwestward, crosses the road from Trieste to Cosina at point 455 and the railway at point 485, passes by points 416 and 326, leaving the villages of Beca and Castel in Yugoslav territory, crosses the road from Ospo to Gabrovizza d'Istria about 100 meters to the southeast of Ospo; then crosses the river Risana and the road from Villa Decani to Risano at a point about 350 meters west of the latter village, the village of Rosario and the road from Risano to San Sergio being left in Yugoslav territory; from this point the line proceeds as far as the cross roads situated about 1 kilometer northeastward of point 362, passing by points 285 and 354.

(iii) Thence, the line runs as far as a point about 0.5 kilometer east of the village of Cernova, crossing the river Dragogna about 1 kilometer north of this village, leaving the villages of Bucciai and Truscolo to the west and the village of Tersecco to the east, it then runs southwestward to the southeast of the road connecting the villages of Cernova and Chervoi, leaving this road 0.8 kilometer to the east of the village of Cucciani; it then runs in a general south-southwesterly direction, passing about 0.4 kilometer east of Monte Braico and at about 0.4 kilometer west of the village of Sterna Filaria, leaving the road running from this village to Piemonte to the east, passing about 0.4 kilometer west of the town of Piemonte and about 0.5 kilometer east of the town of Castagna and reaching the river Quieto at a point approximately 1.6 kilometer southwest of the town of Castagna.

(iv) Thence the line follows the main improved channel of the Quieto to its mouth, passing through Porto del Quieto to the high seas by following a line placed equidistant from the coastlines of the Free Territory of Trieste and Yugoslavia.

The map to which this description refers forms part of Annex I.

Section IV—Italian Colonies

Article 23

1. Italy renounces all right and title to the Italian territorial possessions in Africa, i. e. Libya, Eritrea and Italian Somaliland.

2. Pending their final disposal, the said possessions shall continue under their present administration.

3. The final disposal of these possessions shall be determined jointly by the Governments of the Soviet Union, of the United Kingdom, of the United States of America, and of France within one year from the coming into force of the present Treaty, in the manner laid down in the joint declaration of February 10, 1947, issued by the said Governments, which is reproduced in Annex XI.

Section V—Special Interests of China

Article 24

Italy renounces in favour of China all benefits and privileges resulting from the provisions of the final Protocol signed at Pekin on September 7, 1901,[1] and all annexes, notes and documents supplementary thereto, and agrees to the abrogation in respect of Italy of the said protocol, annexes, notes and documents. Italy likewise renounces any claim thereunder to an indemnity.

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[1] De Martens, *Nouveau Recueil général de Traités*, deuxième série, tome XXXII, page 94.

Article 25

Italy agrees to the cancellation of the lease from the Chinese Government under which the Italian Concession at Tientsin was granted, and to the transfer to the Chinese Government of any property and archives belonging to the municipality of the said Concession.

Article 26

Italy renounces in favour of China the rights accorded to Italy in relation to the International Settlements at Shanghai and Amoy, and agrees to the reversion of the said Settlements to the administration and control of the Chinese Government.

SECTION VI—ALBANIA

Article 27

Italy recognises and undertakes to respect the sovereignty and independence of the State of Albania.

Article 28

Italy recognises that the Island of Saseno is part of the territory of Albania and renounces all claims thereto.

Article 29

Italy formally renounces in favour of Albania all property (apart from normal diplomatic or consular premises), rights, concessions, interests and advantages of all kinds in Albania, belonging to the Italian State or Italian para-statal institutions. Italy likewise renounces all claims to special interests or influence in Albania, acquired as a result of the aggression of April 7, 1939, or under treaties or agreements concluded before that date.

The economic clauses of the present Treaty, applicable to the Allied and Associated Powers, shall apply to other Italian property and other economic relations between Albania and Italy.

Article 30

Italian nationals in Albania will enjoy the same juridical status as other foreign nationals, but Italy recognises the legality of all Albanian measures annulling or modifying concessions or special rights granted to Italian nationals provided that such measures are taken within a year from the coming into force of the present Treaty.

Article 31

Italy recognises that all agreements and arrangements made between Italy and the authorities installed in Albania by Italy from April 7, 1939, to September 3, 1943, are null and void.

Article 32

Italy recognises the legality of any measures which Albania may consider necessary to take in order to confirm or give effect to the preceding provisions.

SECTION VII—ETHIOPIA

Article 33

Italy recognises and undertakes to respect the sovereignty and independence of the State of Ethiopia.

Article 34

Italy formally renounces in favour of Ethiopia all property (apart from normal diplomatic or consular premises), rights, interests and advantages of all kinds acquired at any time in Ethiopia by the Italian State, as well as all para-statal property as defined in paragraph 1 of Annex XIV of the present Treaty.

Italy also renounces all claims to special interests or influence in Ethiopia.

Article 35

Italy recognises the legality of all measures which the Government of Ethiopia has taken or may hereafter take in order to annul Italian measures respecting Ethiopia taken after October 3, 1935, and the effects of such measures.

Article 36

Italian nationals in Ethiopia will enjoy the same juridical status as other foreign nationals, but Italy recognises the legality of all measures of the Ethiopian Government annulling or modifying concessions or special rights granted to Italian nationals, provided such measures are taken within a year from the coming into force of the present Treaty.

Article 37

Within eighteen months from the coming into force of the present Treaty, Italy shall restore all works of art, religious objects, archives and objects of historical value belonging to Ethiopia or its nationals and removed from Ethiopia to Italy since October 3, 1935.

Article 38

The date from which the provisions of the present Treaty shall become applicable as regards all measures and acts of any kind whatsoever entailing the responsibility of Italy or of Italian nationals towards Ethiopia, shall be held to be October 3, 1935.

SECTION VIII—INTERNATIONAL AGREEMENTS

Article 39

Italy undertakes to accept any arrangements which have been or may be agreed for the liquidation of the League of Nations, the Permanent Court of International Justice and also the International Financial Commission in Greece.

Article 40

Italy hereby renounces all rights, titles and claims deriving from the mandate system or from any undertakings given in connection therewith, and all special rights of the Italian State in respect of any mandated territory.

Article 41

Italy recognises the provisions of the Final Act of August 31, 1945, and of the Franco-British Agreement of the same date on the Statute of Tangier, as well as all provisions which may be adopted by the Signatory Powers for carrying out these instruments.

Article 42

Italy shall accept and recognise any arrangements which may be made by the Allied and Associated Powers concerned for the modification of the Congo Basin Treaties with a view to bringing them into accord with the Charter of the United Nations.

Article 43

Italy hereby renounces any rights and interests she may possess by virtue of Article 16 of the Treaty of Lausanne signed on July 24, 1923.[1]

SECTION IX—BILATERAL TREATIES

Article 44

1. Each Allied or Associated Power will notify Italy, within a period of six months from the coming into force of the present Treaty, which of its pre-war bilateral treaties with Italy it desires to keep in force or revive. Any provisions not in conformity with the present Treaty shall, however, be deleted from the above-mentioned treaties.

2. All such treaties so notified shall be registered[2] with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

3. All such treaties not so notified shall be regarded as abrogated.

PART III

WAR CRIMINALS

Article 45

1. Italy shall take all necessary steps to ensure the apprehension and surrender for trial of:

(a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace or humanity;

(b) Nationals of any Allied or Associated Power accused of having violated their national law by treason or collaboration with the enemy during the war.

2. At the request of the United Nations Government concerned, Italy shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

3. Any disagreement concerning the application of the provisions of paragraphs 1 and 2 of this Article shall be referred by any of the Governments concerned to the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France, who will reach agreement with regard to the difficulty.

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[1] League of Nations, *Treaty Series*, Volume XXVIII, page 11.

[2] See the note registered by Czechoslovakia, United Nations, *Treaty Series*, Volume 26, page 103.

PART IV

NAVAL, MILITARY AND AIR CLAUSES

SECTION I—DURATION OF APPLICATION

Article 46

Each of the military, naval and air clauses of the present Treaty shall remain in force until modified in whole or in part by agreement between the Allied and Associated Powers and Italy or, after Italy becomes a member of the United Nations, by agreement between the Security Council and Italy.

SECTION II—GENERAL LIMITATIONS

Article 47

1. *(a)* The system of permanent Italian fortifications and military installations along the Franco-Italian frontier, and their armaments, shall be destroyed or removed

(b) This system is deemed to comprise only artillery and infantry fortifications whether in groups or separated, pillboxes of any type, protected accommodation for personnel, stores and ammunition, observation posts and military cableways, whatever may be their importance and actual condition of maintenance or state of construction, which are constructed of metal, masonry or concrete or excavated in the rock.

2. The destruction or removal, mentioned in paragraph 1 above, is limited to a distance of 20 kilometers from any point on the frontier as defined by the present Treaty, and shall be completed within one year from the coming into force of the Treaty.

3. Any reconstruction of the above-mentioned fortifications and installations is prohibited.

4. *(a)* The following construction to the east of the Franco-Italian frontier is prohibited: permanent fortifications where weapons capable of firing into French territory or territorial waters can be emplaced; permanent military installations capable of being used to conduct or direct fire into French territory or territorial waters; and permanent supply and storage facilities emplaced solely for the use of the above-mentioned fortifications and installations.

(b) This prohibition does not include other types of non-permanent fortifications or surface accommodations and installations which are designed

to meet only requirements of an internal character and of local defence of the frontiers.

5. In a coastal area 15 kilometers deep, stretching from the Franco-Italian frontier to the meridian of 9°30′E., Italy shall not establish any new, nor expand any existing, naval bases or permanent naval installations. This does not prohibit minor alterations to, nor the maintenance in good repair of, existing naval installations provided that their overall capacity will not thereby be increased.

Article 48

1. *(a)* Any permanent Italian fortifications and military installations along the Italo-Yugoslav frontier, and their armaments, shall be destroyed or removed.

(b) These fortifications and installations are deemed to comprise only artillery and infantry fortifications whether in groups or separated, pillboxes of any type, protected accommodation for personnel, stores and ammunition, observation posts and military cableways, whatever may be their importance and actual condition of maintenance or state of construction, which are constructed of metal, masonry or concrete or excavated in the rock.

2. The destruction or removal, mentioned in paragraph 1 above, is limited to a distance of 20 kilometers from any point on the frontier, as defined by the present Treaty, and shall be completed within one year from the coming into force of the Treaty.

3. Any reconstruction of the above-mentioned fortifications and installations is prohibited.

4. *(a)* The following construction to the west of the Italo-Yugoslav frontier is prohibited: permanent fortifications where weapons capable of firing into Yugoslav territory or territorial waters can be emplaced; permanent military installations capable of being used to conduct or direct fire into Yugoslav territory or territorial waters; and permanent supply and storage facilities emplaced solely for the use of the above-mentioned fortifications and installations.

(b) This prohibition does not include other types of non-permanent fortifications or surface accommodations and installations which are designed to meet only requirements of an internal character and of local defence of the frontiers.

5. In a coastal area 15 kilometers deep, stretching from the frontier between Italy and Yugoslavia and between Italy and the Free Territory of Trieste to the latitude of 44° 50′ N. and in the islands adjacent to this coast, Italy shall not establish any new, nor expand any existing, naval bases or permanent naval installations. This does not prohibit minor alterations to, nor the maintenance in good repair of, existing naval installations and bases provided that their overall capacity will not thereby be increased.

6. In the Apulian Peninsula east of longitude 17° 45′ E., Italy shall not construct any new permanent military, naval or military air installations nor expand existing installations. This does not prohibit minor alterations to, nor the maintenance in good repair of, existing installations provided that their overall capacity will not thereby be increased. Accommodation for such security forces as may be required for tasks of an internal character and local defence of frontiers will, however, be permitted.

Article 49

1. Pantellaria, the Pelagian Islands (Lampedusa, Lampione and Linosa) and Pianosa (in the Adriatic) shall be and shall remain demilitarised.

2. Such demilitarisation shall be completed within one year from the coming into force of the present Treaty.

Article 50

1. In Sardinia all permanent coast defence artillery emplacements and their armaments and all naval installations which are located within a distance of 30 kilometers from French territorial waters shall be removed to the mainland of Italy or demolished within one year from the coming into force of the present Treaty.

2. In Sicily and Sardinia all permanent installations and equipment for the maintenance and storage of torpedoes, sea mines and bombs shall be demolished or removed to the mainland of Italy within one year from the coming into force of the present Treaty.

3. No improvements to, reconstruction of, or extensions of existing installations or permanent fortifications in Sicily and Sardinia shall be permitted; however, with the exception of the northern Sardinia areas described in paragraph 1 above, normal maintenance of such installations

or permanent fortifications and weapons already installed in them may take place.

4. In Sicily and Sardinia Italy shall be prohibited from constructing any naval, military and air force installations or fortifications except for such accommodation for security forces as may be required for tasks of an internal character.

Article 51

Italy shall not possess, construct or experiment with *(i)* any atomic weapon, *(ii)* any self-propelled or guided missiles or apparatus connected with their discharge (other than torpedoes and torpedo-launching gear comprising the normal armament of naval vessels permitted by the present Treaty), *(iii)* any guns with a range of over 30 kilometers, *(iv)* sea mines or torpedoes of non-contact types actuated by influence mechanisms, *(v)* any torpedoes capable of being manned.

Article 52

The acquisition of war material of German or Japanese origin or design, either from inside or outside Italy, or its manufacture, is prohibited to Italy.

Article 53

Italy shall not manufacture or possess, either publicly or privately, any war material different in type from, or exceeding in quantity, that required for the forces permitted in Sections III, IV and V below.

Article 54

The total number of heavy and medium tanks in the Italian armed forces shall not exceed 200.

Article 55

In no case shall any officer or non-commissioned officer of the former Fascist Militia or of the former Fascist Republican Army be permitted to hold officer's or non-commissioned officer's rank in the Italian Navy, Army, Air Force or Carabinieri, with the exception of such persons as shall have been exonerated by the appropriate body in accordance with Italian law.

SECTION III — LIMITATION OF THE ITALIAN NAVY

Article 56

1. The present Italian Fleet shall be reduced to the units listed in Annex XII A.

2. Additional units not listed in Annex XII and employed only for the specific purpose of minesweeping, may continue to be employed until the end of the mine clearance period as shall be determined by the International Central Board for Mine Clearance of European Waters.

3. Within two months from the end of the said period, such of these vessels as are on loan to the Italian Navy from other Powers shall be returned to those Powers, and all other additional units shall be disarmed and converted to civilian use.

Article 57

1. Italy shall effect the following disposal of the units of the Italian Navy specified in Annex XII B:

(a) The said units shall be placed at the disposal of the Governments of the Soviet Union, of the United Kingdom, of the United States of America, and of France;

(b) Naval vessels required to be transferred in compliance with sub-paragraph *(a)* above shall be fully equipped, in operational condition including a full outfit of armament stores, and complete with on-board spare parts and all necessary technical data;

(c) The transfer of the naval vessels mentioned above shall be effected within three months from the coming into force of the present Treaty, except that, in the case of naval vessels that cannot be refitted within three months, the time limit for the transfer may be extended by the Four Governments;

(d) Reserve allowance of spare parts and armament stores for the naval vessels mentioned above shall, as far as possible, be supplied with the vessels.

The balance of reserve spare parts and armament stores shall be supplied to an extent and at dates to be decided by the Four Governments, in any case within a maximum of one year from the coming into force of the present Treaty.

2. Details relating to the above transfers will be arranged by a Four Power Commission to be established under a separate protocol.

3. In the event of loss or damage, from whatever cause, to any of the vessels in Annex XII B scheduled for transfer, and which cannot be made good by the agreed date for transfer of the vessel or vessels concerned, Italy undertakes to replace such vessel or vessels by equivalent tonnage from the

list in Annex XII A, the actual vessel or vessels to be substituted being selected by the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France.

Article 58

1. Italy shall effect the following disposal of submarines and non-operational naval vessels. The time limits specified below shall be taken as commencing with the coming into force of the present Treaty.

(a) Surface naval vessels afloat not listed in Annex XII, including naval vessels under construction afloat, shall be destroyed or scrapped for metal within nine months.

(b) Naval vessels under construction on slips shall be destroyed or scrapped for metal within nine months.

(c) Submarines afloat and not listed in Annex XII B shall be sunk in the open sea in a depth of over 100 fathoms within three months.

(d) Naval vessels sunk in Italian harbours and approach channels, in obstruction of normal shipping, shall, within two years, either be destroyed on the spot or salvaged and subsequently destroyed or scrapped for metal.

(e) Naval vessels sunk in shallow Italian waters not in obstruction of normal shipping shall within one year be rendered incapable of salvage.

(f) Naval vessels capable of reconversion which do not come within the definition of war material, and which are not listed in Annex XII, may be reconverted to civilian uses or are to be demolished within two years.

2. Italy undertakes, prior to the sinking or destruction of naval vessels and submarines as provided for in the preceding paragraph, to salvage such equipment and spare parts as may be useful in completing the on-board and reserve allowances of spare parts and equipment to be supplied, in accordance with Article 57, paragraph 1, for all ships specified in Annex XII B.

3. Under the supervision of the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France, Italy may also salvage such equipment and spare parts of a non-warlike character as are readily adaptable for use in Italian civil economy.

Article 59

1. No battleship shall be constructed, acquired or replaced by Italy.

2. No aircraft carrier, submarine or other submersible craft, motor torpedo boat or specialised types of assault craft shall be constructed, acquired, employed or experimented with by Italy.

3. The total standard displacement of the war vessels, other than battleships, of the Italian Navy, including vessels under construction after the date of launching, shall not exceed 67,500 tons.

4. Any replacement of war vessels by Italy shall be effected within the limit of tonnage given in paragraph 3. There shall be no restriction on the replacement of auxiliary vessels.

5. Italy undertakes not to acquire or lay down any war vessels before January 1, 1950, except as necessary to replace any vessel, other than a battleship, accidentally lost, in which case the displacement of the new vessel is not to exceed by more than ten per cent the displacement of the vessel lost.

6. The terms used in this Article are, for the purposes of the present Treaty, defined in Annex XIII A.

Article 60

1. The total personnel of the Italian Navy, excluding any naval air personnel, shall not exceed 25,000 officers and men.

2. During the mine clearance period as determined by the International Central Board for Mine Clearance of European Waters, Italy shall be authorized to employ for this purpose an additional number of officers and men not to exceed 2,500.

3. Permanent naval personnel in excess of that permitted under paragraph 1 shall be progressively reduced as follows, time limits being taken as commencing with the coming into force of the present Treaty:

(a) To 30,000 within six months;

(b) To 25,000 within nine months.

Two months after the completion of minesweeping by the Italian Navy, the excess personnel authorized by paragraph 2 is to be disbanded or absorbed within the above numbers.

4. Personnel, other than those authorized under paragraphs 1 and 2, and other than any naval air personnel authorized under Article 65, shall not receive any form of naval training as defined in Annex XIII B.

SECTION IV—LIMITATION OF THE ITALIAN ARMY

Article 61

The Italian Army, including the Frontier Guards, shall be limited to a force of 185,000 combat, service and overhead personnel and 65,000

Carabinieri, though either of the above elements may be varied by 10,000 as long as the total ceiling does not exceed 250,000. The organisation and armament of the Italian ground forces, as well as their deployment throughout Italy, shall be designed to meet only tasks of an internal character, local defence of Italian frontiers and anti-aircraft defence.

Article 62

The Italian Army, in excess of that permitted under Article 61 above, shall be disbanded within six months from the coming into force of the present Treaty.

Article 63

Personnel other than those forming part of the Italian Army or Carabinieri shall not receive any form of military training as defined in Annex XIII B.

SECTION V—LIMITATION OF THE ITALIAN AIR FORCE

Article 64

1. The Italian Air Force, including any naval air arm, shall be limited to a force of 200 fighter and reconnaissance aircraft and 150 transport, air-sea rescue, training (school type) and liaison aircraft. These totals include reserve aircraft. All aircraft except for fighter and reconnaissance aircraft shall be unarmed. The organisation and armament of the Italian Air Force as well as their deployment throughout Italy shall be designed to meet only tasks of an internal character, local defence of Italian frontiers and defence against air attack.

2. Italy shall not possess or acquire any aircraft designed primarily as bombers with internal bomb-carrying facilities.

Article 65

1. The personnel of the Italian Air Force, including any naval air personnel, shall be limited to a total of 25,000 effectives, which shall include combat, service and overhead personnel.

2. Personnel other than those forming part of the Italian Air Force shall not receive any form of military air training as defined in Annex XIII B.

Article 66

The Italian Air Force, in excess of that permitted under Article 65 above, shall be disbanded within six months from the coming into force of the present Treaty.

SECTION VI—DISPOSAL OF WAR MATERIAL
(as defined in ANNEX XIII C)

Article 67

1. All Italian war material in excess of that permitted for the armed forces specified in Sections III, IV and V shall be placed at the disposal of the Governments of the Soviet Union, of the United Kingdom, of the United States of America, and of France, according to such instructions as they may give to Italy.

2. All Allied war material in excess of that permitted for the armed forces specified in Sections III, IV and V shall be placed at the disposal of the Allied or Associated Power concerned according to the instructions to be given to Italy by the Allied or Associated Power concerned.

3. All German and Japanese war material in excess of that permitted for the armed forces specified in Sections III, IV and V, and all German or Japanese drawings, including existing blueprints, prototypes, experimental models and plans, shall be placed at the disposal of the Four Governments in accordance with such instructions as they may give to Italy.

4. Italy shall renounce all rights to the above-mentioned war material and shall comply with the provisions of this Article within one year from the coming into force of the present Treaty except as provided for in Articles 56 to 58 thereof.

5. Italy shall furnish to the Four Governments lists of all excess war material within six months from the coming into force of the present Treaty.

SECTION VII—PREVENTION OF GERMAN AND JAPANESE REARMAMENT

Article 68

Italy undertakes to co-operate fully with the Allied and Associated Powers with a view to ensuring that Germany and Japan are unable to take steps outside German and Japanese territories towards rearmament.

Article 69

Italy undertakes not to permit the employment or training in Italy of any technicians, including military or civil aviation personnel, who are or have been nationals of Germany or Japan.

Article 70

Italy undertakes not to acquire or manufacture civil aircraft which are of German or Japanese design or which embody major assemblies of German or Japanese manufacture or design.

SECTION VIII—PRISONERS OF WAR

Article 71

1. Italian prisoners of war shall be repatriated as soon as possible in accordance with arrangements agreed upon by the individual Powers detaining them and Italy.

2. All costs, including maintenance costs, incurred in moving Italian prisoners of war from their respective assembly points, as chosen by the Government of the Allied or Associated Power concerned, to the point of their entry into Italian territory, shall be borne by the Italian Government.

SECTION IX—MINE CLEARANCE

Article 72

As from the coming into force of the present Treaty, Italy will be invited to join the Mediterranean Zone Board of the International Organisation for Mine Clearance of European Waters, and shall maintain at the disposal of the Central Mine Clearance Board all Italian minesweeping forces until the end of the post-war mine clearance period as determined by the Central Board.

PART V

WITHDRAWAL OF ALLIED FORCES

Article 73

1. All armed forces of the Allied and Associated Powers shall be withdrawn from Italy as soon as possible and in any case not later than 90 days from the coming into force of the present Treaty.

2. All Italian goods for which compensation has not been made and which are in possession of the armed forces of the Allied and Associated Powers in Italy at the coming into force of the present Treaty shall be returned to the Italian Government within the same period of 90 days or due compensation shall be made.

3. All bank and cash balances in the hands of the forces of the Allied and Associated Powers at the coming into force of the present Treaty which have been supplied free of cost by the Italian Government shall similarly be returned or a corresponding credit given to the Italian Government.

PART VI

CLAIMS ARISING OUT OF THE WAR

SECTION I—REPARATION

Article 74

A. ***REPARATION FOR THE UNION OF SOVIET SOCIALIST REPUBLICS***

1. Italy shall pay the Soviet Union reparation in the amount of $100,000,000 during a period of seven years from the coming into force of the present Treaty. Deliveries from current industrial production shall not be made during the first two years.

2. Reparation shall be made from the following sources:

(a) A share of the Italian factory and tool equipment designed for the manufacture of war material, which is not required by the permitted military establishments, which is not readily susceptible of conversion to civilian purposes and which will be removed from Italy pursuant to Article 67 of the present Treaty;

(b) Italian assets in Roumania, Bulgaria and Hungary, subject to the exceptions specified in paragraph 6 of Article 79;

(c) Italian current industrial production, including production by extractive industries.

3. The quantities and types of goods to be delivered shall be the subject of agreements between the Governments of the Soviet Union and of Italy, and shall be selected and deliveries shall be scheduled in such a way as to avoid interference with the economic reconstruction of Italy and the imposition of additional liabilities on other Allied or Associated Powers. Agreements concluded under this paragraph shall be communicated to the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France.

4. The Soviet Union shall furnish to Italy on commercial terms the materials which are normally imported into Italy and which are needed for the production of these goods. Payments for these materials shall be made by deducting the value of the materials furnished from the value of the goods delivered to the Soviet Union.

5. The Four Ambassadors shall determine the value of the Italian assets to be transferred to the Soviet Union.

6. The basis of calculation for the settlement provided in this Article will be the United States dollar at its gold parity on July 1, 1946, i.e. $35 for one ounce of gold.

B. *REPARATION FOR ALBANIA, ETHIOPIA, GREECE AND YUGOSLAVIA*

1. Italy shall pay reparation to the following States:

Albania in the amount of	$5,000,000
Ethiopia in the amount of	$25,000,000
Greece in the amount of	$105,000,000
Yugoslavia in the amount of	$125,000,000

These payments shall be made during a period of seven years from the coming into force of the present Treaty. Deliveries from current industrial production shall not be made during the first two years.

2. Reparation shall be made from the following sources:

(a) A share of the Italian factory and tool equipment designed for the manufacture of war material, which is not required by the permitted military establishments, which is not readily susceptible of conversion to civilian purposes and which will be removed from Italy pursuant to Article 67 of the present Treaty;

(b) Italian current industrial production, including production by extractive industries;

(c) All other categories of capital goods or services, excluding Italian assets which, under Article 79 of the present Treaty, are subject to the jurisdiction of the States mentioned in paragraph 1 above. Deliveries under this paragraph shall include either or both of the passenger vessels *Saturnia* and *Vulcania*, if, after their value has been determined by the Four Ambassadors, they are claimed within 90 days by one of the States mentioned in paragraph 1 above. Such deliveries may also include seeds.

3. The quantities and types of goods and services to be delivered shall be the subject of agreements between the Governments entitled to receive reparation and the Italian Government, and shall be selected and deliveries shall be scheduled in such a way as to avoid interference with the economic reconstruction of Italy and the imposition of additional liabilities on other Allied or Associated Powers.

4. The States entitled to receive reparation from current industrial production shall furnish to Italy on commercial terms the materials which are normally imported into Italy and which are needed for the production of these goods. Payment for these materials shall be made by deducting the value of the materials furnished from the value of the goods delivered.

5. The basis of calculation for the settlement provided in this Article will be the United States dollar at its gold parity on July 1, 1946, i.e. $35 for one ounce of gold.

6. Claims of the States mentioned in paragraph 1 of part B of this Article, in excess of the amounts of reparation specified in that paragraph, shall be satisfied out of the Italian assets subject to their respective jurisdictions under Article 79 of the present Treaty.

7. *(a)* The Four Ambassadors will coordinate and supervise the execution of the provisions of part B of this Article. They will consult with the Heads of the Diplomatic Missions in Rome of the States named in paragraph 1 of part B and, as circumstances may require, with the Italian Government, and advise them. For the purpose of this Article, the Four Ambassadors will continue to act until the expiration of the period for reparation deliveries provided in paragraph 1 of part B.

(b) With a view to avoiding conflict or overlapping in the allocation of Italian production and resources among the several States entitled to reparation under part B of this Article, the Four Ambassadors shall be informed by any one of the Governments entitled to reparation under part B of this Article and by the Italian Government of the opening of negotiations for an agreement under paragraph 3 above and of the progress of such negotiations. In the event of any differences arising in the course of the negotiations the Four Ambassadors shall be competent to decide any point submitted to them by either Government or by any other Government entitled to reparation under part B of this Article.

(c) Agreements when concluded shall be communicated to the Four Ambassadors. The Four Ambassadors may recommend that an agreement which is not, or has ceased to be, in consonance with the objectives set out in paragraph 3 or sub-paragraph *(b)* above be appropriately modified.

C. *SPECIAL PROVISION FOR EARLIER DELIVERIES*

With respect to deliveries from current industrial production, as provided in part A, paragraph 2 *(c)* and part B, paragraph 2 *(b)*, nothing in either part A or part B of this Article shall be deemed to prevent deliveries during the first two years, if such deliveries are made in accordance with agreements between the Government entitled to reparation and the Italian Government.

D. *REPARATION FOR OTHER STATES*

1. Claims of the other Allied and Associated Powers shall be satisfied out of the Italian assets subject to their respective jurisdictions under Article 79 of the present Treaty.

2. The claims of any State which is receiving territories under the present Treaty and which is not mentioned in part B of this Article shall also be satisfied by the transfer to the said State, without payment, of the industrial installations and equipment situated in the ceded territories and employed in the distribution of water, and the production and distribution of gas and electricity, owned by any Italian company whose *siège social* is in Italy or is transferred to Italy, as well as by the transfer of all other assets of such companies in ceded territories.

3. Responsibility for the financial obligations secured by mortgages, liens and other charges on such property shall be assumed by the Italian Government.

E. *COMPENSATION FOR PROPERTY TAKEN FOR REPARATION PURPOSES*

The Italian Government undertakes to compensate all natural or juridical persons whose property is taken for reparation purposes under this Article.

SECTION II—RESTITUTION BY ITALY

Article 75

1. Italy accepts the principles of the United Nations Declaration of January 5, 1943, and shall return, in the shortest possible time, property removed from the territory of any of the United Nations.

2. The obligation to make restitution applies to all identifiable property at present in Italy which was removed by force or duress by any of the Axis Powers from the territory of any of the United Nations, irrespective of any subsequent transactions by which the present bolder of any such property has secured possession.

3. The Italian Government shall return the property referred to in this Article in good order and, in this connection, shall bear all costs in Italy relating to labour, materials and transport.

4. The Italian Government shall co-operate with the United Nations in, and shall provide at its own expense all necessary facilities for, the search for and restitution of property liable to restitution under this Article.

5. The Italian Government shall take the necessary measures to effect the return of property covered by this Article held in any third country by persons subject to Italian jurisdiction.

6. Claims for the restitution of property shall be presented to the Italian Government by the Government of the country from whose territory the property was removed, it being understood that rolling stock shall be regarded as having been removed from the territory to which it originally belonged. The period during which such claims may be presented shall be six months from the coming into force of the present Treaty.

7. The burden of identifying the property and of proving ownership shall rest on the claimant Government, and the burden of proving that the property was not removed by force or duress shall rest on the Italian Government.

8. The Italian Government shall restore to the Government of the United Nation concerned all monetary gold looted by or wrongfully removed to Italy or shall transfer to the Government of the United Nation concerned an amount of gold equal in weight and fineness to that looted or wrongfully removed. This obligation is recognised by the Italian Government to exist irrespective of any transfers or removals of gold from Italy to any other Axis Power or a neutral country.

9. If, in particular cases, it is impossible for Italy to make restitution of objects of artistic, historical or archaeological value, belonging to the cultural heritage of the United Nation from whose territory such objects were removed by force or duress by Italian forces, authorities or nationals, Italy shall transfer to the United Nation concerned objects of the same kind as, and of approximately equivalent value to, the objects removed, in so far as such objects are obtainable in Italy.

SECTION III—RENUNCIATION OF CLAIMS BY ITALY

Article 76

1. Italy waives all claims of any description against the Allied and Associated Powers on behalf of the Italian Government or Italian nationals arising directly out of the war or out of actions taken because of the existence

of a state of war in Europe after September 1, 1939, whether or not the Allied or Associated Power was at war with Italy at the time, including the following:

(a) Claims for losses or damages sustained as a consequence of acts of forces or authorities of Allied or Associated Powers;

(b) Claims arising from the presence, operations, or actions of forces or authorities of Allied or Associated Powers in Italian territory;

(c) Claims with respect to the decrees or orders of Prize Courts of Allied or Associated Powers, Italy agreeing to accept as valid and binding all decrees and orders of such Prize Courts on or after September 1, 1939, concerning Italian ships or Italian goods or the payment of costs;

(d) Claims arising out of the exercise or purported exercise of belligerent rights.

2. The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Italian Government agrees to make equitable compensation in lire to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Italian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Italian territory.

3. Italy likewise waives all claims of the nature covered by paragraph 1 of this Article on behalf of the Italian Government or Italian nationals against any of the United Nations which broke off diplomatic relations with Italy and which took action in co-operation with the Allied and Associated Powers.

4. The Italian Government shall assume full responsibility for all Allied military currency issued in Italy by the Allied military authorities, including all such currency in circulation at the coming into force of the present Treaty.

5. The waiver of claims by Italy under paragraph 1 of this Article includes any claims arising out of actions taken by any of the Allied and Associated Powers with respect to Italian ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising out of the Conventions on prisoners of war now in force.

6. The provisions of this Article shall not be deemed to affect the ownership of submarine cables which, at the outbreak of the war, were owned by the Italian Government or Italian nationals. This paragraph shall not preclude the application of Article 79 and Annex XIV to submarine cables.

Article 77

1. From the coming into force of the present Treaty property in Germany of Italy and of Italian nationals shall no longer be treated as enemy property and all restrictions based on such treatment shall be removed.

2. Identifiable property of Italy and of Italian nationals removed by force or duress from Italian territory to Germany by German forces or authorities after September 3, 1943, shall be eligible for restitution.

3. The restoration and restitution of Italian property in Germany shall be effected in accordance with measures which will be determined by the Powers in occupation of Germany.

4. Without prejudice to these and to any other dispositions in favour of Italy and Italian nationals by the Powers occupying Germany, Italy waives on its own behalf and on behalf of Italian nationals all claims against Germany and German nationals outstanding on May 8, 1945, except those arising out of contracts and other obligations entered into, and rights acquired, before September 1, 1939. This waiver shall be deemed to include debts, all inter-governmental claims in respect of arrangements entered into in the course of the war, and all claims for loss or damage arising during the war.

5. Italy agrees to take all necessary measures to facilitate such transfers of German assets in Italy as may be determined by those of the Powers occupying Germany which are empowered to dispose of the said assets.

PART VII

PROPERTY, RIGHTS AND INTERESTS

SECTION I—UNITED NATIONS PROPERTY IN ITALY

Article 78

1. In so far as Italy has not already done so, Italy shall restore all legal rights and interests in Italy of the United Nations and their nationals as

they existed on June 10, 1940, and shall return all property in Italy of the United Nations and their nationals as it now exists.

2. The Italian Government undertakes that all property, rights and interests passing under this Article shall be restored free of all encumbrances and charges of any kind to which they may have become subject as a result of the war and without the imposition of any charges by the Italian Government in connection with their return. The Italian Government shall nullify all measures, including seizures, sequestration or control, taken by it against United Nations property between June 10, 1940, and the coming into force of the present Treaty. In cases where the property has not been returned within six months from the coming into force of the present Treaty, application shall be made to the Italian authorities not later than twelve months from the coming into force of the present Treaty, except in cases in which the claimant is able to show that he could not file his application within this period.

3. The Italian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war.

4. *(a)* The Italian Government shall be responsible for the restoration to complete good order of the property returned to United Nations nationals under paragraph 1 of this Article. In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Italy, he shall receive from the Italian Government compensation in lire to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. In no event shall United Nations nationals receive less favourable treatment with respect to compensation than that accorded to Italian nationals.

(b) United Nations nationals who hold, directly or indirectly, ownership interests in corporations or associations which are not United Nations nationals within the meaning of paragraph 9 *(a)* of this Article, but which have suffered a loss by reason of injury or damage to property in Italy, shall receive compensation in accordance with sub-paragraph *(a)* above. This

compensation shall be calculated on the basis of the total loss or damage suffered by the corporation or association and shall bear the same proportion to such loss or damage as the beneficial interests of such nationals in the corporation or association bear to the total capital thereof.

(c) Compensation shall be paid free of any levies, taxes or other charges. It shall be freely usable in Italy but shall be subject to the foreign exchange control regulations which may be in force in Italy from time to time.

(d) The Italian Government shall grant United Nations nationals an indemnity in lire at the same rate as provided in sub-paragraph *(a)* above to compensate them for the loss or damage due to special measures applied to their property during the war, and which were not applicable to Italian property. This sub-paragraph does not apply to a loss of profit.

5. All reasonable expenses incurred in Italy in establishing claims, including the assessment of loss or damage, shall be borne by the Italian Government.

6. United Nations nationals and their property shall be exempted from any exceptional taxes, levies or imposts imposed on their capital assets in Italy by the Italian Government or any Italian authority between September 3, 1943, and the coming into force of the present Treaty for the specific purpose of meeting charges arising out of the war or of meeting the costs of occupying forces or of reparation payable to any of the United Nations. Any sums which have been so paid shall be refunded.

7. Notwithstanding the territorial transfers provided in the present Treaty, Italy shall continue to be responsible for loss or damage sustained during the war by property in ceded territory or in the Free Territory of Trieste belonging to United Nations nationals. The obligations contained in paragraphs 3, 4, 5 and 6 of this Article shall also rest on the Italian Government in regard to property in ceded territory and in the Free Territory of Trieste of United Nations nationals except in so far as this would conflict with the provisions of paragraph 14 of Annex X and paragraph 14 of Annex XIV of the present Treaty.

8. The owner of the property concerned and the Italian Government may agree upon arrangements in lieu of the provisions of this Article.

9. As used in this Article:

(a) "United Nations nationals" means individuals who are nationals of any of the United Nations, or corporations or associations organised under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status on September 3, 1943, the date of the Armistice with Italy.

The term "United Nations nationals" also includes all individuals, corporations or associations which, under the laws in force in Italy during the war, have been treated as enemy;

(b) "Owner" means the United Nations national, as defined in sub-paragraph *(a)* above, who is entitled to the property in question, and includes a successor of the owner, provided that the successor is also a United Nations national as defined in sub-paragraph *(a)*. If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this Article, without prejudice to obligations between the transferor and the purchaser under domestic law;

(c) "Property" means all movable or immovable property, whether tangible or intangible, including industrial, literary and artistic property, as well as all rights or interests of any kind in property. Without prejudice to the generality of the foregoing provisions, the property of the United Nations and their nationals includes all seagoing and river vessels, together with their gear and equipment, which were either owned by United Nations or their nationals, or registered in the territory of one of the United Nations, or sailed under the flag of one of the United Nations and which, after June 10, 1940, while in Italian waters, or after they had been forcibly brought into Italian waters, either were placed under the control of the Italian authorities as enemy property or ceased to be at the free disposal in Italy of the United Nations or their nationals, as a result of measures of control taken by the Italian authorities in relation to the existence of a state of war between members of the United Nations and Germany.

SECTION II – ITALIAN PROPERTY IN THE TERRITORY OF ALLIED AND ASSOCIATED POWERS

Article 79

1. Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property,

rights and interests which on the coming into force of the present Treaty are within its territory and belong to Italy or to Italian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Italy or Italian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty. All Italian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned.

2. The liquidation and disposition of Italian property shall be carried out in accordance with the law of the Allied or Associated Power concerned. The Italian owner shall have no rights with respect to such property except those which may be given him by that law.

3. The Italian Government undertakes to compensate Italian nationals whose property is taken under this Article and not returned to them.

4. No obligation is created by this Article on any Allied or Associated Power to return industrial property to the Italian Government or Italian nationals, or to include such property in determining the amounts which may be retained under paragraph 1 of this Article. The Government of each of the Allied and Associated Powers shall have the right to impose such limitations, conditions and restrictions on rights or interests with respect to industrial property in the territory of that Allied or Associated Power, acquired prior to the coming into force of the present Treaty by the Government or nationals of Italy, as may be deemed by the Government of the Allied or Associated Power to be necessary in the national interest.

5. *(a)* Italian submarine cables connecting points in Yugoslavia shall be deemed to be Italian property in Yugoslavia, despite the fact that lengths of these cables may lie outside the territorial waters of Yugoslavia.

(b) Italian submarine cables connecting a point in the territory of an Allied or Associated Power with a point in Italian territory shall be deemed to be Italian property within the meaning of this Article so far as concerns the terminal facilities and the lengths of cables lying within territorial waters of that Allied or Associated Power.

6. The property covered by paragraph 1 of this Article shall be deemed to include Italian property which has been subject to control by reason of a state of war existing between Italy and the Allied or Associated Power having jurisdiction over the property, but shall not include:

(a) Property of the Italian Government used for consular or diplomatic purposes;

(b) Property belonging to religious bodies or private charitable institutions and used exclusively for religious or charitable purposes;

(c) Property of natural persons who are Italian nationals permitted to reside within the territory of the country in which the property is located or to reside elsewhere in United Nations territory, other than Italian property which at any time during the war was subjected to measures not generally applicable to the property of Italian nationals resident in the same territory;

(d) Property rights arising since the resumption of trade and financial relations between the Allied and Associated Powers and Italy, or arising out of transactions between the Government of any Allied or Associated Power and Italy since September 3, 1943;

(e) Literary and artistic property rights;

(f) Property in ceded territories of Italian nationals, to which the provisions of Annex XIV shall apply;

(g) With the exception of the assets indicated in Article 74, part A, paragraph 2*(b)* and part D, paragraph 1, property of natural persons residing in ceded territories or in the Free Territory of Trieste who do not opt for Italian nationality under the present Treaty, and property of corporations or associations having *siège social* in ceded territories or in the Free Territory of Trieste, provided that such corporations or associations are not owned or controlled by persons in Italy. In the cases provided under Article 74, part A, paragraph 2*(b)*, and part D, paragraph 1, the question of compensation will be dealt with under Article 74, part E.

SECTION III — DECLARATION OF THE ALLIED AND ASSOCIATED POWERS IN RESPECT OF CLAIMS

Article 80

The Allied and Associated Powers declare that the rights attributed to them under Articles 74 and 79 of the present Treaty cover all their claims and those of their nationals for loss or damage due to acts of war, including measures due to the occupation of their territory, attributable to Italy and having occurred outside Italian territory, with the exception of claims based on Articles 75 and 78.

SECTION IV—DEBTS

Article 81

1. The existence of the state of war shall not, in itself, be regarded as affecting the obligation to pay pecuniary debts arising out of obligations and contracts which existed, and rights which were acquired, before the existence of the state of war, which became payable prior to the coming into force of the present Treaty, and which are due by the Government or nationals of Italy to the Government or nationals of one of the Allied and Associated Powers or are due by the Government or nationals of one of the Allied and Associated Powers to the Government or nationals of Italy.

2. Except as otherwise expressly provided in the present Treaty, nothing therein shall be construed as impairing debtor-creditor relationships arising out of pre-war contracts concluded either by the Government or nationals of Italy.

PART VIII

GENERAL ECONOMIC RELATIONS

Article 82

1. Pending the conclusion of commercial treaties or agreements between individual United Nations and Italy, the Italian Government shall, during a period of eighteen months from the coming into force of the present Treaty, grant the following treatment to each of the United Nations which, in fact, reciprocally grants similar treatment in like matters to Italy:

(a) In all that concerns duties and charges on importation or exportation, the internal taxation of imported goods and all regulations pertaining thereto, the United Nations shall be granted unconditional most-favoured-nation treatment;

(b) In all other respects, Italy shall make no arbitrary discrimination against goods originating in or destined for any territory of any of the United Nations as compared with like goods originating in or destined for territory of any other of the United Nations or of any other foreign country;

(c) United Nations nationals, including juridical persons, shall be granted national and most-favoured-nation treatment in all matters pertaining to commerce, industry, shipping and other forms of business activity within Italy. These provisions shall not apply to commercial aviation;

(d) Italy shall grant no exclusive or discriminatory right to any country with regard to the operation of commercial aircraft in international traffic, shall afford all the United Nations equality of opportunity in obtaining international commercial aviation rights in Italian territory, including the right to land for refueling and repair, and, with regard to the operation of commercial aircraft in international traffic, shall grant on a reciprocal and non-discriminatory basis to all United Nations the right to fly over Italian territory without landing. These provisions shall not affect the interests of the national defense of Italy.

2. The foregoing undertakings by Italy shall be understood to be subject to the exceptions customarily included in commercial treaties concluded by Italy before the war; and the provisions with respect to reciprocity granted by each of the United Nations shall be understood to be subject to the exceptions customarily included in the commercial treaties concluded by that State

PART IX

SETTLEMENT OF DISPUTES

Article 83

1. Any disputes which may arise in giving effect to Articles 75 and 7 and Annexes XIV, XV, XVI and XVII, part B, of the present Treaty shal be referred to a Conciliation Commission consisting of one representativ of the Government of the United Nation concerned and one representativ of the Government of Italy, having equal status. If within three months afte the dispute has been referred to the Conciliation Commission no agreemen has been reached, either Government may ask for the addition to the Commission of a third member selected by mutual agreement of the two Governments from nationals of a third country. Should the two Governmen fail to agree within two months on the selection of a third member of th Commission, the Governments shall apply to the Ambassadors in Rome the Soviet Union, of the United Kingdom, of the United States of Americ and of France, who will appoint the third member of the Commission. the Ambassadors are unable to agree within a period of one month upon th appointment of the third member, the Secretary-General of the Unite Nations may be requested by either party to make the appointment.

2. When any Conciliation Commission is established under paragraph 1 above, it shall have jurisdiction over all disputes which may thereafter arise between the United Nation concerned and Italy in the application or interpretation of Articles 75 and 78 and Annexes XIV, XV, XVI, and XVII, part B, of the present Treaty, and shall perform the functions attributed to it by those provisions.

3. Each Conciliation Commission shall determine its own procedure, adopting rules conforming to justice and equity.

4. Each Government shall pay the salary of the member of the Conciliation Commission whom it appoints and of any agent whom it may designate to represent it before the Commission. The salary of the third member shall be fixed by special agreement between the Governments concerned and this salary, together with the common expenses of each Commission, shall be paid in equal shares by the two Governments.

5. The parties undertake that their authorities shall furnish directly to the Conciliation Commission all assistance which may be within their power.

6. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

PART X

MISCELLANEOUS ECONOMIC PROVISIONS

Article 84

Articles 75, 78, 82 and Annex XVII of the present Treaty shall apply to the Allied and Associated Powers and to those of the United Nations which broke off diplomatic relations with Italy or with which Italy broke off diplomatic relations. These Articles and this Annex shall also apply to Albania and Norway.

Article 85

The provisions of Annexes VIII, X, XIV, XV, XVI and XVII shall, as in the case of the other Annexes, have force and effect as integral parts of the present Treaty.

PART XI

FINAL CLAUSES

Article 86

1. For a period not to exceed eighteen months from the coming into force of the present Treaty, the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France, acting in concert, will represent the Allied and Associated Powers in dealing with the Italian Government in all matters concerning the execution and interpretation of the present Treaty.

2. The Four Ambassadors will give the Italian Government such guidance, technical advice and clarification as may be necessary to ensure the rapid and efficient execution of the present Treaty both in letter and in spirit.

3. The Italian Government shall afford to the said Four Ambassadors all necessary information and any assistance which they may require in the fulfilment of the tasks devolving on them under the present Treaty.

Article 87

1. Except where another procedure is specifically provided under any Article of the present Treaty, any dispute concerning the interpretation or execution of the Treaty, which is not settled by direct diplomatic negotiations, shall be referred to the Four Ambassadors acting under Article 86 except that in this case the Ambassadors will not be restricted by the time limit provided in that Article. Any such dispute not resolved by them within a period of two months shall, unless the parties to the dispute mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

Article 88

1. Any member of the United Nations, not a signatory to the present Treaty, which is at war with Italy, and Albania, may accede to the Treaty and upon accession shall be deemed to be an Associated Power for the purposes of the Treaty.

2. Instruments of accession shall be deposited with the Government of the French Republic and shall take effect upon deposit.

Article 89

The provisions of the present Treaty shall not confer any rights or benefits on any State named in the Preamble as one of the Allied and Associated Powers or on its nationals until such State becomes a party to the Treaty by deposit of its instrument of ratification.

Article 90

The present Treaty, of which the French, English and Russian texts are authentic, shall be ratified by the Allied and Associated Powers. It shall also be ratified by Italy. It shall come into force immediately upon the deposit of ratifications by the Union of Soviet Socialist Republics, by the United Kingdom of Great Britain and Northern Ireland, by the United States of America, and by France. The instruments of ratification shall, in the shortest time possible, be deposited with the Government of the French Republic.

With respect to each Allied or Associated Power whose instrument of ratification is thereafter deposited, the Treaty shall come into force upon the date of deposit. The present Treaty shall be deposited in the archives of the Government of the French Republic, which shall furnish certified copies to each of the signatory States.

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[1] United Nations, *Treaty Series*, Volume 50.

ANNEX XI

Joint Declaration by the Governments of the Soviet Union, of the United Kingdom, of the United States of America and of France concerning Italian Territorial Possessions in Africa

(See Article 23)

1. The Governments of the Union of Soviet Socialist Republics, of the United Kingdom of Great Britain and Northern Ireland, of the United States of America, and of France agree that they will, within one year from the coming into force of the Treaty of Peace with Italy bearing the date of February 10, 1947, jointly determine the final disposal of Italy's territorial possessions in Africa, to which, in accordance with Article 23 of the Treaty, Italy renounces all right and title.

2. The final disposal of the territories concerued and the appropriate adjustment of their boundaries shall be made by the Four Powers in the light of the wishes and welfare of the inhabitants and the interests of peace and security, taking into consideration the views of other interested Governments.

3. If with respect to any of these territories the Four Powers are unable to agree upon their disposal within one year from the coming into force of the Treaty of Peace with Italy, the matter shall be referred to the General Assembly of the United Nations for a recommendation, and the Four Powers agree to accept the recommendation and to take appropriate measures for giving effect to it.

4. The Deputies of the Foreign Ministers shall continue the consideration of the question of the disposal of the former Italian Colonies with a view to submitting to the Council of Foreign Ministers their recommendations on this matter. They shall also send out commissions of investigation to any of the former Italian Colonies in order to supply the Deputies with the necessary data on this question and to ascertain the views of the local population.

Annex 27

LIBYA-UNITED KINGDOM AGREEMENT OF 29 JULY 1953

Treaty between Her Majesty in respect of the United Kingdom
of Great Britain and Northern Ireland
and His Majesty the King of the United Kingdom of Libya,
Benghazi, 29 July 1953. (FO 93/148/12).

TREATY BETWEEN HER MAJESTY IN RESPECT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND HIS MAJESTY THE KING OF THE UNITED KINGDOM OF LIBYA.

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories (hereinafter referred to as Her Britannic Majesty) and His Majesty The King of the United Kingdom of Libya (hereinafter referred to as His Majesty The King of Libya);

Considering that on the 24th day of December 1951 the United Kingdom of Libya became an independent sovereign State in pursuance of resolutions of the General Assembly of the United Nations dated the 21st day of November 1949 and the 17th day of November 1950;

And being animated by a sincere desire to consolidate the friendship and good relations which exist between Their Majesties:

And desiring to conclude a Treaty of Friendship and Alliance with this object and with the object of strengthening the contribution which each of them will be able to make to the maintenance of international peace and security in accordance with the provisions and principles of the Charter of the United Nations:

Have accordingly appointed as their Plenipotentiaries

Her Britannic Majesty:

for the United Kingdom of Great Britain and Northern Ireland:

Sir Alec Kirkbride, K. C. M. G., O.B.E., M.C., her Envoy Extraordinary and Minister Plenipotentiary

His Majesty The King of Libya:

for the United Kingdom of Libya:

Essyaed Mahmud Muntasser, Prime Minister and Minister for Foreign Affairs

Who having exhibited their full powers found in good and due form have agreed as follows:-

ARTICLE 1

There shall be peace and friendship and a close alliance between the High Contracting Parties in consecration of their cordial understanding and their good relations.

Each of the High Contracting Parties undertakes not to adopt in regard to foreign countries an attitude which is inconsistent with the alliance or which might create difficulties for the other party thereto.

ARTICLE 2

Should either High Contracting Party

become engaged in war or armed conflict, the other High Contracting Party will, subject always to the provisions of Article 4, immediately come to his aid as a measure of collective defence. In the event of an imminent menace of hostilities involving either of the High Contracting Parties they will immediately concert together the necessary measures of defence.

ARTICLE 3

The High Contracting Parties recognise that it is in their common interest to provide for their mutual defence and to ensure that their countries are in a position to play their part in the maintenance of international peace and security. To this end each will furnish to the other all the facilities and assistance in his power on terms to be agreed upon. In return for facilities provided by His Majesty The King of Libya for British armed forces in Libya on conditions to be agreed upon, Her Britannic Majesty will provide financial assistance to His Majesty The King of Libya, on terms to be agreed upon as aforesaid.

ARTICLE 4

Nothing in the present Treaty is intended to, or shall in any way, prejudice the rights and obligations which devolve, or may devolve, upon either of the High Contracting Parties under the Charter of the United Nations or under any other existing international agreements, conventions or treaties, including, in the case of Libya, the Covenant of the League of Arab States.

ARTICLE 5

This Treaty shall be ratified and shall come into force upon the exchange of instruments of ratification which shall take place as soon as possible.

ARTICLE 6

This Treaty shall remain in force for a period of twenty years except in so far as it may be revised or replaced by a new Treaty during that period by agreement of both the High Contracting Parties, and it shall in any case be reviewed at the end of ten years. Each of the High Contracting Parties agrees in this connexion to have in mind the extent to which international peace and security can be ensured through the United Nations. Before the expiry of a period of nineteen years either High Contracting Party may give to the other through the diplomatic channel notice of termination at the end of the said period of twenty years. If the Treaty has not been so terminated, and subject to any revision or replacement thereof, it shall continue in force after the period of twenty years until the expiry of one year after notice of termination has been given by either High Contracting Party to the other through the diplomatic channel.

ARTICLE 7

Should any difference arise relative to the application or interpretation of the present Treaty and should the High Contracting Parties fail to settle such difference by direct negotiations, it shall be referred to the International Court of Justice unless the parties agree to another mode of settlement.

In Witness whereof the above-named Plenipotentiaries have signed the present Treaty and affixed thereto their Seals.

Done in duplicate at Benghazi this twenty ninth day of July, 1953, in the English and Arabic languages, both texts being equally authentic.

معاهدة بين صاحبة الجلالة بالنسبة للمملكة المتحدة لبريطانيا العظمى وايرلندا الشمالية وبين صاحب الجلالة ملك المملكة الليبية المتحدة

ان صاحبة الجلالة ملكة بريطانيا العظمى وايرلندا الشمالية وممالكها واراضيها الاخرى (المشار اليها فيما بعد بصاحبة الجلالة البريطانية) وصاحب الجلالة ملك المملكة الليبية المتحدة (المشار اليه فيما بعد بصاحب الجلالة ملك ليبيا) ؛

حيث ان المملكة الليبية المتحدة اصبحت في يوم ٢٤ ديسمبر ١٩٥١ دولة مستقلة ذات سيادة بموجب قرارى الجمعية العمومية للامم المتحدة المؤرخين في اليوم الحادى والعشرين من نوفمبر ١٩٤٩ واليوم السابع عشر من نوفمبر ١٩٥٠ ·

ولما كانت الرغبة الصادقة تحدوهما لتوثيق عرى الصداقة والعلاقات الطيبة القائمة بين ا جلالتيهما ·

ورغبة منهما في عقد معاهدة صداقة وتحالف لهذا الغرض ولغرض تقوية ما يمكن كل منهما ان يساهم به لحفظ السلم والامن الدوليين وفقا لاحكام ميثاق الامم المتحدة ومبادئه :

قد عينا بناء على ذلك مفوضين عنهما :

صاحبة الجلالة البريطانية :
السر اليك كركبرايد ، كي. سي. ام. جي —
او. بي. اى. — ام. سي. مندوبها
فوق العادة ووزيرها المفوض .

من المملكة المتحدة لبريطانيا العظمى وايرلندا الشمالية .

صاحب الجلالة ملك ليبيا :
السيد محمود المنتصر ، رئيس الوزراء ووزير
الخارجية

من المملكة الليبية المتحدة .

اللذين بعد ان ابرز كل منهما اوراق تفويضه للآخر فوجداها صحيحة قد اتفقا على ما يلي :

المادة الاولى

يسود سلم وصداقة وتحالف وثيق بين الفريقين الساميين المتعاقدين توطيدا لتفاهمهما الودي وصلاتهما الطيبة .

يتعهد كل من الفريقين الساميين المتعاقدين بعدم اتخاذ موقف ازاء البلاد الأجنبية يتنافى مع التحالف او قد يخلق مصاعب للفريق الآخر .

المادة الثانية

اذا اشتبك اى الفريقين الساميين المتعاقدين

في حرب او نزاع مسلح بسبب الفريق السامي العاقد الآخر لنجدته كتدبير للدفاع الجماعي مع مراعاة دائما احكام المادة ٤ .

في حالة خطر أعمال عدائية داهم محدق بأي من الفريقين الساميين العاقدين يتفق الفريقان فورا على تدابير الدفاع اللازمة .

المادة الثالثة

يعترف الفريقان الساميان العاقدان بانه من مصلحتهما المشتركة الأستعداد لدفاعهما المتبادل والتأكد من ان بلاديهما في حالة تمكنهما من القيام بدورهما في صيانة السلام والأمن الدوليين . ولهذه الغاية يقدم كل منهما للآخر كافة التسهيلات والمساعدات التي في وسعه بشروط يتفق عليها . وفي مقابل التسهيلات التي يقدمها صاحب الجلالة ملك ليبيا للقوات البريطانية المسلحة بليبيا بشروط يتفق عليها ، تقدم صاحبة الجلالة البريطانية مساعدة مالية لصاحب الجلالة ملك ليبيا بشروط يتفق عليها كما سبق ذكره .

المادة الرابعة

ليس في هذه المعاهدة ما يرمي الى الأخلال او يخل باى حال بالحقوق والالتزامات التي تترتب او قد تترتب على اى من الفريقين الساميين المتعاقدين بموجب ميثاق الأمم المتحدة او بموجب اى اتفاقيات او عهود او معاهدات دولية قائمة بما في ذلك ، فيما يخص ليبيا ، ميثاق جامعة الدول العربية .

المادة الخامسة

تبرم هذه المعاهدة وتوضع موضع التنفيذ على اثر تبادل وثائق الأبرام الذى يتم في اقرب وقت ممكن .

المادة السادسة

تظل هذه المعاهدة نافذة لمدة عشرين سنة الا اذا عدلت او ابدلت بمعاهدة جديدة اثناء تلك المدة باتفاق كلا الفريقين الساميين المتعاقدين ويعاد النظر فيها على كل حال في نهاية عشر سنوات . ويوافق كل من الفريقين الساميين المتعاقدين في هذا الخصوص على ان يتذكر المدى الذى يمكن فيه ضمان السلام والأمن الدوليين عن طريق الامم المتحدة . ويجوز لاى الفريقين

الساميين المتعاقدين ان يشعر الفريق الآخر بالطرق الدبلوماسية قبل نهاية مدة تسع عشرة سنة بالانهاء في آخر مدة العشرين سنة المذكورة . فاذا لم تنته المعاهدة بهذه الطريقة تظل سارية المفعول مع خضوعها للتعديل او الابدال حتى مرور سنة واحدة بعد ان يشعر احد الفريقين الساميين المتعاقدين بالطرق الدبلوماسية الفريق الآخر بالغائها .

المادة السابعة

اذا قام اى خلاف على تطبيق هذه المعاهدة او تفسيرها واذا عجز الفريقان الساميان المتعاقدان من فض الخلاف بمفاوضات مباشرة ، فان الخلاف يرفع الى محكمة العدل الدولية الا اذا اتفق الطرفان على طريقة اخرى لفضه .

واقرارا لذلك وقع المفوضان المذكوران أعلاه على هذه المعاهدة وبصماها بختميهما .

حررت في صورتين ببنغازي في اليوم التاسع والعشرين من يوليو ١٩٥٣ باللغتين الانكليزية والعربية وكلا النصين متساو في صحته .

~~عن حكومة المملكة الليبية المتحدة~~ ~~عن حكومة المملكة المتحدة~~

....

Annex 28

TRAITÉ D'AMITIÉ ET DE BON VOISINAGE ENTRE LA RÉPUBLIQUE FRANÇAISE ET LE ROYAUME-UNI DE LIBYE, TRIPOLI, 10 AOÛT 1955

French text. *Notes et études documentaires*,
La Documentation française, No. 2.251, 17 janvier 1957.

Arabic text. Ministry of Foreign Affairs
of the United Kingdom of Libya.

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Traité d'amitié et de bon voisinage entre la République française et le Royaume-Uni de Libye

(10 août 1955)

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INTRODUCTION *

Le 29 novembre 1956, le Conseil de la République a adopté par 196 voix contre 92 le projet autorisant le Président de la République à ratifier le traité avec la Libye signé à Tripoli le 10 août 1955, projet que l'Assemblée Nationale avait précédemment adopté le 22 novembre par 411 voix contre 120.

Après la proclamation, le 24 décembre 1951, de l'indépendance libyenne, les bases définitives sur lesquelles devaient être établies les relations franco-lybiennes ont fait l'objet de négociations portant, en premier lieu, sur la protection de nos intérêts au Fezzan, tandis que les forces françaises, entrées dans cette province en 1942 à la suite du général Leclerc, y étaient maintenues en vertu d'un accord provisoire.

Le gouvernement libyen, qui a conclu en juillet 1953 un Traité d'alliance avec la Grande-Bretagne et en septembre 1945 une Convention avec les Etats-Unis, a cependant fait connaître à la fin de 1954 qu'il n'envisageait pas d'alliance avec la France, le Royaume-Uni étant désormais assuré de sa défense et a signifié à notre gouvernement, le 13 novembre, qu'il ne pouvait accepter le maintien des garnisons françaises au Fezzan au delà du 31 décembre 1954, date à laquelle l'accord provisoire, renouvelé à plusieurs reprises, devait venir à expiration.

Le gouvernement français ayant refusé de replier ses forces militaires avant la conclusion d'un traité d'amitié et de bon voisinage établissant les relations des deux pays sur des bases définitives et garantissant le respect de nos intérêts politiques et militaires en Libye, les négociations reprirent, en janvier 1955 à Paris, puis en juillet à Tripoli et aboutirent, le 10 août 1955, à la signature de l'instrument diplomatique, dont l'économie a été soumise à l'examen de l'Assemblée Nationale.

Ce Traité, pose en principe, dès son premier article, la Paix et l'Amitié qui, au delà de la validité même des accords, prévue pour une durée de vingt ans et renouvelable dans la suite par tacite reconduction d'année en année, présideront aux rapports de la France et de la Libye, placés par le Préambule sous le signe de l'association des intérêts des deux pays et du respect de leur souveraineté réciproque.

Les problèmes d'ordre militaire, dominés par le règlement de la question du Fezzan, sont abordés par les articles 4 et 5 du Traité et par la Convention particulière qui lui est rattachée. :

1° La France accepte de retirer ses troupes du Fezzan, mais ce repli est assorti de délais largement calculés puisqu'ils atteignent quinze mois ; par ailleurs, l'assurance est donné par la Libye qu'aucune troupe étrangère ne pénétrera au Fezzan, même occasionnellement, après le départ des forces françaises.

2. Si le Traité ne comporte pas l'établissement d'une alliance entre les deux pays, il répond cependant aux préoccupations de l'État-Major français désireux de demeurer intéressé à la défense de la Libye et, plus particulièrement de sa province méridionale ; son article 5 comporte, en effet, un engagement de consultation mutuelle sur les mesures à prendre, en cas d'agression, en vue d'assurer la défense des territoires respectifs des deux parties ; cette disposition doit être rapprochée de l'interdiction d'accès des troupes étrangères au Fezzan et, surtout, des facilités militaires consenties, dès le temps de paix aux forces françaises.

3. Celles-ci portent essentiellement sur l'utilisation de la piste n° 5 (de la frontière tunisienne à celle de l'Afrique équatoriale française), ainsi que des bretelles qui, se détachant de cette piste, permettent l'accès des postes français de Fort Saint et de Djanet et sur le droit d'escale accordé aux avions militaires français sur les terrains d'aviation de Ghadamès, Ghât et Sebha.

4. La présence française au Fezzan demeure, en outre, affirmée par les dispositions prévues en faveur du maintien des techniciens français utilisés par les autorités provinciales ; si la Libye n'a pas contracté, à ce sujet, d'engagements formels, elle a cependant accepté de réserver à l'usage des agents français des bâtiments qu'ils occupent actuellement, en outre la propriété des installation aéronautiques ne lui reviendra que dans la mesure où les techniciens français y auront conservé leurs fonctions.

La portée du nouveau traité n'a pas été limitée aux problèmes militaires et les négociateurs se sont attachés, sur un plan plus général, à établir les bases de relations amicales et durables envers les deux pays voisins.

1. Certains problèmes frontaliers, nés de l'imprécision des textes internationaux qui régissent la matière, ont été résolus par l'article 3 du Traité, en particulier dans le secteur compris entre Ghât et Tummo, où l'accès de la France à trois points essentiels jusqu'à présent contestés, a été expressément admis: par le même article la Libye renonce à se prévaloir des accords conclus en 1935 entre MM. Laval et Mussolini et accordant à l'Italie la partie septentrionale du Tibesti, tandis qu'une procédure d'arbitrage est instituée d'un commun accord en vue de trancher les difficultés qui pourraient s'élever au cours des opérations d'abornement.

2. Une convention de bon voisinage organise l'exercice des usages traditionnels de transhumance, de trafic caravanier et de circulation saisonnière et crée une commission mixte de conciliation chargée de régler les litiges frontaliers ; il est prévu à ce sujet que les deux polices prendront toutes les mesures propres à réprimer la contrebande et à poursuivre les délinquants.

3. Une Convention de coopération économique prévoit le développement des relations entre les deux pays qui s'interdisent, à cet égard, toute discrimination. L'article 9 de cette convention envisage le financement par la France, de réalisations d'intérêt économique ou technique, mais précise qu'aucun engagement ne pourra excéder dans ce domaine la limite des crédits ouverts par le Parlement.

4. Une Convention culturelle permet le développement des échanges culturels entre les deux pays: la Libye s'y engage à encourager l'enseignement de la langue française dans ses établissements scolaires et la France à accorder des bourses annuelles à des étudiants libyens.

Les concessions impliquées dans ces accords se trouvent ainsi compensées par l'établissement des relations franco-libyiennes dans un climat nouveau de coopération. Il n'est pas nécessaire de souligner l'importance que revêt, dans la conjoncture actuelle, la conclusion entre les deux Etats voisins d'un Traité dont les dispositions suppriment les possibilités de friction qui subsistaient jusqu'à présent et remplacent l'incertitude actuelle par un ensemble cohérent et complet sur lequel il sera possible d'asseoir aux portes de la Tunisie indépendante une amitié franco-libyenne réelle et efficace.

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* La présente introduction reproduit l'exposé des motifs du projet de loi n° 22-12 tendant à autoriser le Président de la République à ratifier le traité d'amitié et de Bon voisinage signé à Tripoli, le 10 août 1955, entre la France et Royaume-Uni de Libye.

TRAITE D'AMITIE ET DE BON VOISINAGE ENTRE LA REPUBLIQUE FRANÇAISE ET LE ROYAUME UNI DE LIBYE

(10 août 1955)

Le Président de la République Française

Et Sa Majesté le Roi du Royaume Uni de Libye,

Désireux de consacrer par le présent traité l'amitié et l'association d'intérêts qui existent entre la République Française et le Royaume Uni de Libye,

Convaincus qu'un Traité d'amitié et de bon voisinage conclu dans un esprit de compréhension réciproque et sur la base d'une égalité, d'une indépendance et d'une liberté complètes facilitera le règlement de toutes les questions que posent pour les deux pays leur situation géographique et leurs intérêts en Afrique et en Méditerranée,

Désireux de se prêter mutuellement assistance et de coopérer étroitement entre eux aussi bien qu'avec les autres nations pour maintenir la paix et s'opposer à l'agression, conformément à la Charte des Nations Unies,

Animés enfin de la volonté de resserrer les relations économiques, culturelles et de bon voisinage entre les deux pays, dans leur commun intérêt comme dans celui de la prospérité générale,

Ont décidé de conclure un Traité à cet effet et ont désigné pour leurs Plénipotentiaires :

Le Président de la République Française :

Pour la République Française.

Son Excellence Monsieur Maurice Dejean, Ambassadeur de France.

Sa Majesté le Roi du Royaume Uni de Libye :

Pour le Royaume Uni de Libye.

Son Excellence Monsieur Mustapha Ben Halim, Premier Ministre et Ministre des Affaires Etrangères du Royaume Uni de Libye.

Lesquels, après s'être communiqué leurs pleins pouvoirs reconnus en bonne et due forme, sont convenus des dispositions suivantes :

Article Premier

Il y aura paix et amitié perpétuelles entre la République Française et le Royaume Uni de Libye.

Les Hautes Parties Contractantes se consulteront aussi souvent que leurs intérêts communs l'exigeront.

Elles se conformeront dans leurs relations mutuelles aux principes formulés par l'article 2 de la Charte des Nations Unies.

Les Hautes Parties Contractantes ne prendront aucun engagement incompatible avec les dispositions du présent traité et ne feront rien qui soit de nature à créer des difficultés à l'autre partie, compte tenu des dispositions de l'article 7 ci-dessous.

Article 2

Chacune des Hautes Parties Contractantes sera représentée auprès de l'autre Partie par un représentant diplomatique dûment accrédité.

Article 3

Les deux Hautes Parties Contractantes reconnaissent que les frontières séparant les territoires de la Tunisie, de l'Afrique Occidentale Française et de l'Afrique Equatoriale Française d'une part, du territoire de la Libye d'autre part, sont celles qui résultent des actes internationaux en vigueur à la date de la constitution du Royaume Uni de Libye, tels qu'ils sont définis dans l'échange de lettres ci-jointes (Annexe 1).

Article 4

Les deux Hautes Parties Contractantes, considérant les obligations qui leur incombent réciproquement du fait de leur situation géographique, s'engagent à prendre, chacune sur son territoire, toutes les mesures nécessaires au maintien de la paix et de la sécurité dans les régions avoisinant les frontières définies à l'article précédent et à maintenir entre elles des relations de bon voisinage.

A cet effet, les deux Hautes Parties Contractantes ont conclu une Convention particulière ainsi qu'une Convention de bon voisinage jointes au présent Traité.

Article 5

Au cas où l'une des Hautes Parties Contractantes se trouverait engagée dans un conflit armé affectant les territoires du Continent africain situés dans l'hémisphère Nord, du fait de l'agression d'une autre Puissance ou en cas de menace imminente d'une telle agression, les Hautes Parties Contractantes se consulteront en vue d'assurer la défense de leurs territoires respectifs. En ce qui concerne la France, il s'agit des territoires dont elle assume la défense et qui sont limitrophes de la Libye, à savoir : la Tunisie, l'Algérie, l'Afrique Occidentale Française et l'Afrique Equatoriale Française. En ce qui concerne la Libye, il s'agit du territoire libyen tel qu'il est défini à l'article 3 du présent Traité.

Article 6

Les Hautes Parties Contractantes s'attacheront à resserrer leurs relations économiques et culturelles, dans les conditions qui font l'objet de la Convention de la coopération économique et de la Convention culturelle jointes au présent Traité.

Article 7

Le présent Traité ne porte aucune atteinte aux droits et obligations résultant pour les Hautes Parties Contractantes des dispositions de la Charte des Nations Unies et de tous autres Traités, Conventions ou accords régulièrement publiés, y compris, pour le Royaume Uni de Libye, le Pacte de la Ligue des Etats arabes.

Article 8

Les différends auxquels pourraient donner lieu l'interprétation et l'application du présent traité et qui n'auraient pu être réglés par voie de négociations directes seront portés devant la Cour Internationale de Justice à la demande de l'une des deux Parties à moins que les Hautes Parties Contractantes ne conviennent d'un autre mode de règlement.

Article 9

Dans les Conventions et Annexes qui sont jointes au présent Traité et en font partie intégrante, le terme : « le Gouvernement français » désigne le Gouvernement de la République Française, et le terme : « le Gouvernement libyen » désigne le Gouvernement du Royaume Uni de Libye.

Article 10

Le présent Traité sera ratifié et entrera en vigueur à la date de l'échange des instruments de ratification qui aura lieu à Paris aussitôt que faire se pourra.

Article 11

Le présent Traité est conclu pour une durée de vingt années.

Les Hautes Parties Contractantes pourront toujours se consulter en vue de sa révision.

Cette consultation sera obligatoire à l'expiration des dix années qui suivront sa mise en vigueur.

Il pourra être mis fin au présent Traité par l'une ou l'autre Partie vingt ans après son entrée en vigueur ou à toute époque ultérieure, avec un préavis d'un an adressé à l'autre Partie.

En foi de quoi, les Plénipotentiaires ci-dessus désignés ont signé le présent Traité, les Conventions et échanges de lettres annexes et y ont apposé leur cachet.

Fait à Tripoli, le dix août 1955, en double original, en langues française et arabe, les deux textes faisant également foi.

Pour le Gouvernement
de la
République Française
Maurice DEJEAN

Pour le Gouvernement
du
Royaume Uni de Libye
Mustapha BEN HALIM

CONVENTION PARTICULIERE

Article premier

Le Gouvernement français s'engage à retirer ses forces militaires actuellement au Fezzan. Cette évacuation sera achevée dans un délai de douze mois après la mise en vigueur du Traité, et au plus tard le 30 novembre 1956. Jusqu'à l'expiration de ce délai, ces forces seront soumises au régime juridictionnel défini dans l'échange de lettres ci-jointes (Annexe II) et jouiront des mêmes facilités de ravitaillement et de circulation que par le passé.

Article 2

De son côté le Gouvernement libyen prend l'engagement, après le départ des troupes françaises actuellement stationnées au Fezzan, d'assurer par des forces exclusivement libyennes l'occupation de ce territoire et l'exécution de toutes missions de caractère militaire que les circonstances pourraient rendre nécessaires.

Article 3

Le Gouvernement libyen accueillera favorablement, dans les limites fixées par une lettre interprétative (Annexe III), les demandes qui lui seront présentées par le Gouvernement français en vue du passage sur la piste n °5 de convois militaires des forces françaises à destination ou en provenance du Tchad. Cette lettre interprétative définit également l'itinéraire dit piste n° 5 ainsi que le régime juridictionnel applicable aux forces françaises en transit.

Article 4

Le Gouvernement libyen autorise le Gouvernement français à emprunter pour la relève, la maintenance et le ravitaillement des postes français de Fort-Saint et de Djanet, les itinéraires actuellement utilisés dans ce but.

Cette autorisation est accordée pour la période nécessaire à l'établissement de l'autre côté de la frontière des moyens de communication adéquats, conformément à l'échange de lettres ci-jointes (Annexe IV).

Article 5

A l'expiration du délai fixé pour l'évacuation des forces françaises du Fezzan, le gouvernement français remettra au gouvernement libyen les aérodromes de Sebha, Ghat et Ghadames et les installations techniques qui y sont annexées (bâtiment et matériel radio aéronautique et météorologique, logements de personnels). Les installations deviendront propriété du gouvernement libyen à l'expiration de la présente Convention, sous réserve que le gouvernement libyen aura été en mesure de maintenir sur ces aérodromes une majorité de techniciens français dans les conditions prévues par les lettres ci-annexées (Annexe V).

En vue de faciliter les communications aériennes françaises entre le Nord et le Centre de l'Afrique, et compte tenu de l'inexistence, au moment de la signature de la présente Convention, d'aérodromes français dans la région visée ci-dessus, le gouvernement libyen accordera, sur préavis, aux aéronefs militaires français, à compter de l'évacuation des forces françaises du Fezzan, le droit de survol et d'escale technique, pour une période de cinq ans sur l'aérodrome de Sebha, et pour une période de deux ans sur les aérodromes de Ghat et de Ghadamès, dans les conditions et les limites fixées par l'échange de lettres ci-jointes (Annexe VI).

A l'expiration de cette période de cinq ans, le gouvernement libyen considérera favorablement les demandes que le gouvernement français présentera en vue du survol et de l'escale technique d'aéronefs militaires français sur l'aérodrome de Sebha.

Article 6

La présente convention sera ratifiée en même temps que le traité auquel elle est annexée, elle entrera en vigueur à la date de l'échange des instruments de ratification, pourra être revisée et prendra fin dans les mêmes conditions que le traité lui-même.

Fait à Tripoli le 10 août 1955,
en double original, en langues française et arabe, les deux textes faisant également foi.

Pour le Gouvernement
de la République Française :
Maurice Dejean

Pour le Gouvernement
du Royaume-Uni de Libye :
Mustapha Ben Halim

CONVENTION DE BON VOISINAGE

Le gouvernement français et le gouvernement libyen, désireux de régler leurs rapports de voisinage conformément à l'article 4 du Traité d'amitié et de bon voisinage, sont convenus de ce qui suit :

TITRE I

Sécurité des frontières

Article premier

Sur les frontières, telles que définies à l'article 3 du Traité d'amitié et de bon voisinage, séparant le Royaume-Uni de Libye des territoires dont la France assume la défense, tels que définis à l'article 5 dudit Traité, les gouvernements français et libyen prendront toutes mesures en vue d'assurer le maintien de l'ordre et de la sécurité, par une liaison et une coopération de leurs services de police.

Il est bien entendu que les dispositions ci-dessus ne sauraient porter atteinte au droit d'asile tel qu'il est exercé conformément aux usages internationaux.

TITRE II

Transhumance

Article 2

Le gouvernement français et le gouvernement libyen s'engagent à accorder des facilités de transhumance aux nomades des tribus transhumant traditionnellement de part et d'autre de la frontière séparant l'Algérie de la Libye.

Article 3

A cet effet, de part et d'autre de cette frontière, une zone est ouverte à tous les nomades visés à l'article 4 ci-dessous, titulaires d'une carte de transhumance.

Cette zone est limitée :

En territoire français : par une ligne qui, partant de la frontière à l'ouest de Ghadamès, passe par l'Oued Tinfouchaye, Ohanet, Hassi Takouazet, Assi Issendjel, Tin Henka, Adrar Mariaou, In Ezzane et rejoint le point coté 1010 (Garet Derouët El Djemel).

En territoire libyen : par une ligne qui, partant de Gara Nalout, passe par Derj, Argoubech Cherma, Aouinet Ouenin, Bir Sebil, Hassi Mentas, Zharen, Tin Halioune, Hassi Souis, Oubari, Aouu El Khemsade et rejoint le Col d'Anaï.

Article 4

Les cartes de transhumance seront délivrées, sur leur demande, aux nomades relevant des autorités administratives suivantes et par ces dernières :

Territoire français : autorités administratives de Fort Flatters, Fort Polignac et Djanet.

Territoire libyen : autorités administratives de Ghadamès, de Ghat et des Touareg Orarhen.

Article 5

Les cartes de transhumance seront valables pour une période maximum de neuf mois. Elles seront familiales et devront porter les indications suivantes en langues française et arabe :

— Nom du chef de famille ....
— Tribu .... Fraction ....
— Noms des membres de la famille ....
— Nombre de têtes de bétail ....
— Zone de destination ....
— Durée de validité ....
— Date de délivrance ....
— Signature et cachet de l'autorité ayant délivré la carte ....

Article 6

Les nomades titulaires d'une carte de transhumance pourront, pour les nécessités de leur nomadisation, traverser librement la frontière et circuler à l'intérieur de la zone de destination qui leur est assignée par la carte prévue à l'article 5.

Ils pourront, dans les limites de cette zone, circuler avec leurs troupeaux sans avoir à payer aucun droit de douane pour leurs animaux et leurs effets et provisions personnels ; ils seront également exemptés de tout droit de pâturage et d'abreuvoir et de toute autre taxe relative à l'entrée et au séjour dans le territoire.

Article 7

Tout nomade titulaire d'une carte de transhumance devra la faire viser par les autorités administratives du lieu où il se rend.

Article 8

Lorsque les circonstances l'exigeront, des facilités de transhumance analogues pourront être également accordées de part et d'autre de la frontière séparant la Tunisie de la Libye.

TITRE III

Trafic caravanier et circulation frontalière

Article 9

Le gouvernement français et le gouvernement libyen s'engagent à accorder des facilités de circulation aux nomades des tribus commerçant traditionnellement de part et d'autre de la frontière séparant d'une part l'Algérie, l'Afrique Occidentale Française et l'Afrique Equatoriale Française, d'autre part la Libye afin de maintenir les courants caravaniers traditionnels qui existent entre les régions du Tibesti, de l'Ennedi, du Borkou, de Bilma et des Ajjers d'une part, et celles de Koufra, Mourzouk, Oubari, Ghat, Edri et Ghadamès d'autre part.

Article 10

A cet effet, de part et d'autre de la frontière, une zone est ouverte au trafic caravanier pratiqué par les nomades visés à l'article 11 ci-dessous, titulaires d'une carte de circulation pour trafic caravanier.

Cette zone est limitée :

En territoire français : par une ligne qui, partant de la frontière à l'ouest de Ghadamès, passe par Tinfouchaye, Timellouline, Ohanet, Fort Polignac, Fort Gardel, Bilma, Zouar, Largeau, Fada et se prolonge en ligne droite jusqu'à la frontière franco-soudanaise.

En territoire libyen : par une ligne qui, partant de Sinaouen, passe par Derj, Edri, El Abiod, Ghoddoua

Zouila, Ouaou En Namous, Koufra et se prolonge en ligne droite jusqu'à la frontière libyco-égyptienne.

Article 11

Les cartes de circulation pour le trafic caravanier seront délivrées, sur leur demande, aux nomades relevant des autorités administratives suivantes et par ces dernières :

Territoire français : autorités administratives de Fort Flatters, Fort Polignac, Djanet, Bilma, Zouar, Largeau, Fada.

Territoire libyen : autorités administratives de Ghadamès, Ghat, Mourzouk, Koufra et des Touareg Oraghen.

Article 12

Ces cartes de circulation seront valables pour une période maximum de cinq mois.

Elles seront individuelles et devront porter les indications suivantes en langues française et arabe :

— Nom du titulaire ....
— Tribu .... Fraction ....
— Profession ....
— Destination ....
— Motif du voyage ....
— Marchandises exportées ....
— Durée de validité ....
— Date de délivrance ....
— Signature et cachet de l'autorité ayant délivré la carte ....

Article 13

Les nomades titulaires d'une carte de circulation pour le trafic caravanier pourront traverser librement la frontière en emportant les marchandises suivantes sans avoir à payer ni droits de douane, ni taxes relatives à l'entrée et à la circulation dans le territoire considéré :

Vers la Libye : bétail sur pieds, beurre, fromage, peaux, objets d'artisanat, viande séchée.

Vers le territoire français : céréales, dattes, objets d'artisanat, tomates séchées.

Toutes les autres marchandises seront soumises aux droits de douane, mais elles ne feront pas l'objet de licence d'importation et d'exportation tant qu'elles demeureront à l'intérieur de la zone frontalière.

Article 14

Tout nomade titulaire d'une carte de circulation pour le trafic caravanier devra obligatoirement la faire viser par les autorités administratives du lieu où il se rend et, éventuellement, par celles qui se trouvent sur son itinéraire.

Article 15

Les gouvernements français et libyen s'engagent à accorder des facilités de circulation de part et d'autre de la frontière séparant d'une part l'Algérie, d'autre part la Libye, aux personnes résidant à l'intérieur de la zone frontalière *définie* à l'article 10 de la présente Convention et possédant des biens immobiliers de l'autre côté de la frontière dans cette zone frontalière.

Il en sera de même pour les personnes résidant à Dehibat et possédant des biens immobiliers dans la région d'Ouazzen, et pour les personnes résidant à Ouazzen et possédant des biens immobiliers dans la région de Dehibat.

Article 16

Toutes facilités seront accordées à ces personnes pour qu'elles puissent franchir la frontière en rapportant le produit de leurs biens sans acquitter de droits de douane ou autres taxes.

Article 17

Les autorités frontalières françaises et libyennes accorderont également des facilités de circulation aux ouvriers agricoles participant chaque année aux travaux saisonniers de l'autre côté de la frontière.

Ces ouvriers pourront rapporter librement chez eux les marchandises qu'ils auront reçues en paiement de leur travail.

Article 18

Les personnes visées aux articles 15 et 17 seront munies de cartes de circulation frontalière délivrées par les autorités administratives du lieu de départ et qui devront être visées par les autorités frontalières du pays où elles se rendent ; ces cartes seront familiales et comporteront les indications suivantes :

— Nom du titulaire ....
— Tribu .... Fraction ....
— Destination ....
— Durée de validité ....
— Nom des personnes accompagnant le titulaire ....
— Date de délivrance ....
— Signature et cachet de l'autorité ayant délivré la carte ....

TITRE IV

Dispositions communes

Article 19

Les personnes titulaires d'une carte de transhumance, de trafic caravanier ou de circulation frontalière doivent se soumettre aux lois et règlements qui sont en vigueur dans le pays où elles se trouvent, et en particulier à ceux qui ont trait à l'ordre et à la sécurité publics.

Article 20

Les autorités frontalières françaises et libyennes prendront toutes les mesures propres à éviter les vols d'animaux, à réprimer la contrebande et à poursuivre les délinquants.

Article 21

Les différends auxquels pourra donner lieu l'application de la présente Convention seront soumis à des commissions d'arbitrage qui se réuniront à des dates à fixer d'un commun accord, alternativement en zone frontalière française ou tunisienne et en zone frontalière libyenne. Ces commissions seront composées d'un nombre égal de représentants pour chacune des deux zones. Leurs décisions seront exécutoires si, dans un délai de trente jours, les autorités administratives de l'une ou l'autre des Parties n'ont pas fait connaître leur opposition.

Article 22

La présente Convention sera ratifiée en même temps que le traité auquel elle est jointe, elle entrera en vigueur à la date de l'échange des instruments de ratification, pourra être revisée et prendra fin dans les mêmes conditions que le Traité lui-même.

Fait à Tripoli, le 10 août 1955, en double original, en langues française et arabe, les deux textes faisant également foi.

Pour le Gouvernement
de la République Française :
Maurice DEJEAN

Pour le Gouvernement
du Royaume-Uni de Libye :
Mustapha Ben HALIM

CONVENTION DE COOPERATION ECONOMIQUE

Le gouvernement français et le gouvernement libyen également animés du désir de resserrer, conformément à l'article 6 du Traité d'amitié et de bon voisinage, les rapports économiques et commerciaux entre les deux pays, sont convenus de ce qui suit :

Article premier

Les Hautes Parties Contractantes s'engagent à étudier en commun les mesures que, dans le cadre de leur réglementation nationale, elles pourront adopter afin de développer les échanges commerciaux entre les deux pays.

A cet effet, elles pourront procéder à la conclusion de tous les accords et conventions qui leur paraîtront nécessaires. En particulier, elles pourront engager des négociations en vue de la signature d'un traité de commerce et d'établissement et, si l'évolution des échanges paraît l'exiger, d'un accord commercial.

Article 2

D'ores et déjà, les Hautes Parties Contractantes s'engagent à ne pas traiter, en ce qui concerne les droits de douane, les taxes indirectes, le régime des changes et, d'une manière générale, toutes les mesures qui se rapportent au commerce extérieur, les marchandises originaires de chacune d'elles d'une manière discriminatoire par rapport à ce que leur réglementation nationale — sous réserve, en particulier, des dispositions relatives aux obligations résultant pour l'une ou l'autre Partie de son adhésion à des accords économiques régionaux, notamment, pour la France, la Communauté Européenne du Charbon et de l'Acier et, pour la Libye, la Ligue arabe — prévoit pour les marchandises similaires originaires d'autres pays étrangers.

Article 3

Le même engagement de non-discrimination s'applique aux entreprises industrielles, agricoles et commerciales relevant de chacune des Hautes Parties Contractantes.

En conséquence, les entreprises industrielles, agricoles et commerciales de l'une des Hautes Parties Contractantes exerçant leur activité sur le territoire de l'autre ne pourront être placées dans des conditions différentes de celles qui seront faites aux entreprises similaires relevant de pays tiers.

En vertu de cet engagement également, les entreprises industrielles, agricoles et commerciales relevant de l'une des Hautes Parties Contractantes seront admises aux appels d'offres et aux adjudications organisées par l'autre Haute Partie Contractante dans des conditions identiques à celles dans lesquelles seront admises les entreprises relevant d'autres pays étrangers.

Article 4

En ce qui concerne les transferts de capitaux entre la zone monétaire du franc français et la Libye, les Hautes Parties Contractantes s'engagent à les autoriser dans les conditions prévues par leurs réglementations générales des changes respectives.

Article 5

Les marchandises en provenance et à destination de la zone monétaire du franc français transitant par la Libye seront admises en territoire libyen en franchise de douane, dans les conditions définies par la réglementation libyenne du transit.

Le bénéfice de mesures réciproques sera accordé aux marchandises en provenance et à destination de la Libye transitant par la zone monétaire du franc français.

Article 6

Dans le but d'aider la Libye à développer ses ressources industrielles et agricoles et à accroître ses possibilités d'échanges, le gouvernement français lui accordera sa coopération économique et technique.

Article 7

A la demande du gouvernement libyen, le gouvernement français mettra à la disposition de celui-ci des techniciens de toutes les spécialités dont il pourra avoir besoin.

Ces techniciens bénéficieront de la part du gouvernement libyen de conditions d'emploi aussi favorables que celles qui seront faites aux techniciens étrangers de toute autre nationalité.

Article 8

Le gouvernement français favorisera l'étude et l'exécution par des firmes françaises des projets d'équipement industriel et agricole qui leur seront confiés en Libye.

Il pourra faciliter, en respectant les règles de son régime d'assurance-crédit d'Etat, le financement à crédit des fournitures industrielles qui comporteront ces projets d'équipement.

Article 9

Avec l'accord du gouvernement libyen, le gouvernement français lui-même pourra participer, dans la limite des crédits ouverts par le Parlement de la République Française, au financement de réalisations d'intérêt économique ou technique et au capital d'institutions ayant pour objet de telles réalisations.

Article 10

L'ensemble des questions mentionnées par la présente Convention donnera lieu à consultations mutuelles entre les deux gouvernements aussi souvent qu'ils le jugeront nécessaire.

Article 11

La présente Convention sera ratifiée en même temps que le Traité auquel elle est jointe. Elle entrera en vigueur à la date de l'échange des instruments de ratification, pourra être revisée et prendra fin dans les mêmes conditions que le Traité lui-même.

Fait à Tripoli, le 10 août 1955,
en double original, en langues française et arabe, les deux textes faisant également foi.

Pour le Gouvernement
de la République Française :
Maurice DEJEAN.

Pour le Gouvernement
du Royaume-Uni de Libye :
Mustapha Ben HALIM.

CONVENTION CULTURELLE

Le gouvernement français et le gouvernement libyen, également animés du désir de maintenir et de développer les excellentes relations établies entre les deux pays dans le domaine de l'Enseignement et de la recherche scientifique, et désirant mettre en application, sur la base de la réciprocité, l'article 6 du traité d'amitié et de bon voisinage, sont convenus de ce qui suit :

Article premier

Le gouvernement français et le gouvernement libyen faciliteront, dans le cadre de leurs législations propres, l'échange entre les deux pays d'instruments culturels, notamment de livres, de films et de matériel scientifique.

Article 2

Dans le cadre de son programme scolaire, le gouvernement libyen encouragera l'enseignement de la langue française dans les établissements d'enseignement libyen.

A cet effet, le gouvernement libyen pourra faire appel au gouvernement français pour le recrutement du personnel qualifié et fournira à celui-ci les facilités nécessaires à l'exercice de ses fonctions.

Des dispositions particulières pourront être prises à ce sujet par accord entre les deux gouvernements.

Article 3

Le gouvernement français accordera des bourses annuelles à des étudiants libyens désireux de poursuivre ou de compléter leurs études dans des établissements d'enseignement ou de recherche scientifique.

Des dispositions particulières seront prises à cet effet entre les deux gouvernements.

Article 4

Le gouvernement français et le gouvernement libyen favoriseront réciproquement les recherches d'ordre scientifique intéressant les deux pays.

Article 5

Les deux gouvernements se communiqueront chaque année les renseignements relatifs à la mise en application des dispositions fixées aux précédents articles et conviendront des mesures propres à développer les relations culturelles entre les deux pays.

Article 6

La présente Convention sera ratifiée en même temps que le Traité auquel elle est annexée, elle entrera en vigueur à la date de l'échange des instruments de ratification, pourra être revisée et prendre fin dans les mêmes conditions que le Traité lui-même.

Fait à Tripoli le 10 août 1955, en double original, en langues française et arabe, les deux textes faisant également foi.

Pour le Gouvernement
de la République Française :
Maurice DEJEAN.

Pour le Gouvernement
du Royaume-Uni de Libye :
Mustapha Ben HALIM.

ANNEXE I

LÉGATION DE FRANCE
EN LIBYE

Tripoli, le 10 août 1955.

Excellence,

L'article 3 du Traité d'amitié et de bon voisinage entre la France et la Libye dispose que :

« Les deux Hautes Parties Contractantes reconnaissent que les frontières séparant le territoire de la Libye d'une part, des territoires de la Tunisie, de l'Algérie, de l'Afrique Occidentale Française et de l'Afrique Equatoriale Française d'autre part, sont celles qui résultent des actes internationaux en vigueur à la date de la constitution du Royaume-Uni de Libye, tels qu'ils sont définis dans l'échange de lettres ci-jointes (Annexe I) ».

Il s'agit des textes suivants :

- — la convention franco-britannique du 14 juin 1898,
- — la déclaration additionnelle, du 21 mars 1899, à la convention précédente,
- — les accords franco-italiens du 1er novembre 1902,
- — la convention entre la République Française et la Sublime Porte du 12 mai 1910,
- — la convention franco-britannique du 8 septembre 1919,
- — l'arrangement franco-italien du 12 septembre 1919.

En ce qui concerne ce dernier arrangement et conformément aux principes qui y sont énoncés, il a été reconnu par les deux délégations qu'entre Ghat et Toummo la frontière passe par les trois points suivants, à savoir : la Trouée de Takharkhouri, le col d'Anaï et le point coté 1010 (Garet Derouet el Djemel).

Le gouvernement français est prêt à désigner des experts qui pourraient faire partie d'une commission mixte franco-libyenne chargée de procéder à l'abornement de la frontière partout où ce travail n'a pas encore été effectué et où l'un des deux gouvernements l'estimerait nécessaire.

En cas de désaccord au cours des opérations d'abornement, les deux Parties désigneront chacune un arbitre neutre et, en cas de désaccord entre les arbitres, ces derniers désigneront un surarbitre également neutre qui tranchera le différend.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : DEJEAN.

Ministère
des Affaires Étrangères
du Royaume-Uni de Libye

Tripoli, le 10 août 1955.

Excellence,

Vous avez bien voulu m'adresser au nom de votre gouvernement la lettre suivante :

……

(Suit le texte de la lettre précédente).

……

J'ai l'honneur de vous confirmer l'accord du gouvernement libyen sur ces propositions.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : Mustapha Ben Halim.

ANNEXE II

Légation de France
en Libye

10 août 1955.

Excellence,

Me référant à l'Article premier de la Convention particulière, j'ai l'honneur de vous confirmer que le gouvernement français reconnait que les membres des forces françaises doivent respecter l'indépendance, la souveraineté et les lois du Royaume-Uni de Libye et s'abstenir de toutes activités incompatibles avec cette obligation ou avec l'esprit du traité d'amitié et de bon voisinage conclu entre le gouvernement français et le gouvernement libyen.

En outre, j'ai l'honneur de vous proposer que le régime juridictionnel de ces forces soit défini comme suit :

I. — *Affaires civiles.*

a) Sous réserve du paragraphe b) ci-dessous, les tribunaux libyens seront compétents pour toutes affaires civiles dans lesquelles seraient impliqués des membres des forces françaises. Dans de semblables cas, les autorités françaises compétentes prendront, à la demande des autorités libyennes intéressées, toutes mesures en leur pouvoir pour que soient respectés les jugements et arrêts des tribunaux libyens et, pour autant que les considérations de sécurité le permettent, apporteront leur concours aux autorités libyennes pour l'exécution des dits jugements et arrêts. Toutefois, aucun membre des forces françaises ne pourra être exposé à être retiré du service par aucun jugement ni arrêt du tribunal et l'exécution d'un tel arrêt ou jugement ne pourra porter atteinte ni à sa personne, ni à sa solde, ni à ses armes et munitions, ni à son équipement.

b) Le gouvernement français paiera une indemnité équitable en réparation des dommages causés par les membres des forces françaises dans l'accomplissement de leur service. Les tribunaux ne seront pas saisis de semblables affaires.

c) Le gouvernement libyen paiera une indemnité équitable en réparation des dommages causés aux forces françaises ou à leurs membres dans l'accomplissement de leur service, par des personnes directement employées par le gouvernement libyen.

II. — *Affaires pénales.*

a) Sous les réserves formulées au paragraphe b) ci-dessous, les tribunaux libyens seront compétents à moins que le gouvernement libyen ne renonce à leur droit d'exercer leur juridiction. Le gouvernement libyen considérera avec sympathie toute demande des autorités françaises tendant au dessaisissement des tribunaux libyens, soit que les dites autorités attachent une grande importance à ce dessaisissement, soit qu'une sanction appropriée puisse être prise par voie disciplinaire sans recours au tribunal. Dans ce dernier cas, le gouvernement français portera ladite sanction à la connaissance du gouvernement libyen.

b) Les tribunaux et autorités du gouvernement de la République Française peuvent exercer leur juridiction et autorité sur les membres des forces françaises, telle qu'elle leur appartient en vertu des lois françaises, dans les cas suivants, à savoir :

1° crimes ou délits commis à l'encontre des biens du gouvernement français ou de la personne ou des biens d'un autre membre des forces françaises ;

2° crimes ou délits commis exclusivement à l'intérieur des postes français ;

3° crimes ou délits portant atteinte exclusivement à la sécurité du gouvernement français, y compris la trahison, le sabotage, la violation de toute loi relative à la protection du secret ou de tous secrets ayant trait à la Défense Nationale de la République Française ;

4° délits découlant de tous actes ou omissions liés exclusivement à l'exécution du service,

et, dans tous ces cas où existent une telle juridiction ou autorité françaises, les membres des forces françaises ne seront pas soumis à la juridiction des tribunaux libyens.

c) Les autorités françaises et libyennes se prêteront assistance pour arrêter et remettre entre les mains des autorités compétentes les membres des forces françaises en vue de leur jugement conformément aux dispositions ci-dessus. Les autorités libyennes feront aussitôt connaître aux autorités françaises l'arrestation d'un membre des forces françaises. Les autorités libyennes, si les autorités françaises demandent que soit relaxé un membre des forces françaises en détention préventive, remettront celui-ci à la garde des autorités françaises, à la condition que ces dernières prennent l'engagement de présenter l'intéressé aux tribunaux libyens pour toutes procédures d'enquête ou de jugement.

d) Les autorités françaises et libyennes se prêteront mutuelle assistance pour mener à bien toutes enquêtes nécessaires, pour rechercher la preuve, y compris par la production de témoins au procès et la saisie et la remise de pièces à conviction, celles-ci devant être ensuite restituées.

e) Lorsqu'un membre des forces françaises est traduit devant un tribunal libyen, il a le droit :

1° d'être promptement et rapidement jugé ;

2° d'être informé, avant d'être traduit devant le tribunal, des charges relevées contre lui ;

3° d'être confronté avec les témoins à charge,

4° d'user des moyens légaux permettant d'obliger à comparaître les témoins à décharge ;

5° de faire appel à un défenseur de son choix ;

6° de faire appel à un interprète qualifié ;

7° de communiquer avec les autorités du gouvernement français dont un représentant assistera aux audiences.

f) Les autorités du gouvernement libyen communiqueront aux autorités françaises les jugements rendus par tout tribunal libyen à l'encontre d'un membre des forces françaises.

g) Le gouvernement français aura le droit d'assurer la police à l'intérieur des postes français, d'y maintenir l'ordre, d'y arrêter tous coupables présumés et, si ceux-ci sont justiciables des tribunaux libyens, le gouvernement français les déférera aux autorités libyennes pour être jugés.

Je propose enfin que, par dérogation à l'article 6 de la Convention particulière, les dispositions de la présente lettre entrent en vigueur dès la signature de ladite Convention.

Je vous serais reconnaissant de bien vouloir me confirmer l'accord du gouvernement libyen sur les propositions qui précèdent.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : Dejean

Ministère
des Affaires étrangères
du Royaume-Uni de Libye

Tripoli, le 10 août 1955.

Excellence,

Vous avez bien voulu m'adresser au nom de votre gouvernement la lettre suivante :

....

(Suit le texte de la lettre précédente).

....

J'ai l'honneur de vous confirmer l'accord du gouvernement libyen sur ces propositions.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : Mustapha Ben Halim.

ANNEXE III

Légation de France
en Libye

Tripoli, le 10 août 1955.

Excellence,

L'article 3 de la Convention particulière dispose que :

« *Le* gouvernement libyen accueillera favorablement, dans les limites fixées par une lettre interprétative, les demandes qui lui seront présentées par le gouvernement français en vue du passage sur la piste n° 5 de convois militaires des forces françaises à destination ou en provenance du Tchad. Cette lettre interprétative définit également l'itinéraire dit « Piste n° 5 », ainsi que le régime juridictionnel applicable aux forces françaises en transit ».

I. — Les limites en question seront les suivantes :

- la fréquence maxima du passage sera de : un convoi tous les deux mois en moyenne, ou six convois par an au total ;
- chaque convoi ne devra pas dépasser un total de trente véhicules ;
- le total du personnel militaire faisant partie de chaque convoi s'élèvera à un maximum de 150 hommes ;
- les convois pourront faire les haltes nécessaires au repos du personnel et à l'entretien du matériel et à leur ravitaillement en eau, vivres et carburants ;
- la durée du passage en territoire libyen de chaque convoi ne devra pas excéder douze jours, sauf cas de force majeure.

II. — La piste n° 5 est l'itinéraire qui, venant de la région de Remada en Tunisie, passe par le point nommé Touil Ali ben Amer à environ 30 kilomètres au Nord-est de Bir Zar, puis se dirige vers Sinaouen, Derj, Bir Ghazeil, la région d'Aouinet, Ouenin, Serhir Ben Afian, Kneir, Sebha, Oum El Araneb, la région de Mejdoul, Gatroun, Uigh El Kébir et pénètre en territoire du Tchad dans la région de Muri Idie, avec toute variante que l'état de l'itinéraire indiqué ci-dessus rendrait plus facile à l'utiliser.

Au cas où, dans l'avenir, un itinéraire nouveau assurant les mêmes communications de façon plus directe ou moins pénible pour le matériel viendrait à être établi, les convois visés auraient, après accord du gouvernement libyen, la faculté de l'utiliser en tout ou en partie.

III. — *Régime juridictionnel des forces françaises en transit.*

J'ai l'honneur de vous confirmer que le gouvernement français reconnaît que les membres des forces françaises en transit doivent respecter l'indépendance, la souveraineté et les lois du Royaume-Uni de Libye et s'abstenir de toutes activités incompatibles avec cette obligation ou avec l'esprit du Traité d'amitié et de bon voisinage conclu entre le gouvernement français et le gouvernement libyen.

En outre, je propose que, jusqu'à l'expiration du délai fixé pour l'évacuation des forces françaises du Fezzan, le régime juridictionnel applicable aux forces françaises en transit dans les conditions prévues par la présente lettre soit le même que celui qui est appliqué aux forces françaises stationnées au Fezzan, tel qu'il est défini dans l'Annexe II à la Convention particulière. Passé ce délai, soit au plus tard à partir du 1er décembre 1956, les dispositions suivantes entreront en vigueur :

1° *Affaires civiles.*

a) Sous réserve du paragraphe b) ci-dessous, les tribunaux libyens seront compétents pour toutes affaires civiles dans lesquelles seraient impliqués des membres des forces françaises en transit. Dans de semblables cas, les autorités françaises compétentes prendront, à la demande des autorités libyennes intéressées, toutes mesures en leur pouvoir pour que soient respectés les jugements et arrêts des tribunaux libyens et, pour autant que les considérations de sécurité le permettent, apporteront leurs concours aux autorités libyennes pour l'exécution des dits jugements et arrêts. Toutefois, aucun membre des forces françaises en transit ne pourra être exposé à être retiré du service par aucun jugement ni arrêt du tribunal et l'exécution d'un tel arrêt ou jugement ne pourra porter atteinte ni à sa personne, ni à sa solde, ni à ses armes et munitions, ni à son équipement, étant entendu que le gouvernement français assurera l'exécution du dit jugement ou arrêt.

b) Le gouvernement français paiera une indemnité équitable en réparation des dommages causés aux forces françaises en transit dans l'accomplissement de leur service.

c) Le gouvernement libyen paiera une indemnité équitable en réparation des dommages causés aux forces françaises en transit ou à leurs membres dans l'accomplissement de leur service, par des personnes directement employées par le gouvernement libyen.

2° *Affaires pénales.*

a) Sous les réserves formulées au paragraphe b) ci-dessous, les tribunaux libyens seront compétents pour toutes affaires pénales dans lesquelles seraient impliqués des membres des forces françaises en transit, à moins que le gouvernement libyen ne renonce à leur droit d'exercer leur juridiction.

b) Les juridictions françaises auront compétence sur les membres des forces françaises en transit dans les cas suivants, à savoir :

— crimes ou délits commis à l'encontre des biens du gouvernement français ou de la personne ou des biens d'un autre membre des forces françaises en transit ;

— crimes ou délits portant atteinte exclusivement à la sécurité du gouvernement français, y compris la trahison, le sabotage, la violation de toute loi relative à la protection du secret ou de tous secrets ayant trait à la Défense nationale de la République Française ;

— délits découlant de tous actes ou omissions liés exclusivement à l'exécution du service. De tels délits feront l'objet d'une attestation du représentant diplomatique de la France en Libye, qui sera reconnue comme valable par les tribunaux libyens.

c) Les autorités françaises et libyennes se prêteront assistance pour arrêter et remettre entre les mains des autorités compétentes les membres des forces françaises en transit en vue de leur jugement conformément aux dispositions ci-dessus. Les autorités libyennes feront aussitôt connaître aux autorités françaises l'arrestation d'un membre des forces françaises en transit. Celui-ci sera transféré dans les délais les plus brefs dans une localité où se trouve une autorité consulaire française, afin que cette dernière puisse immédiatement entrer en rapport avec lui.

d) Les autorités françaises et libyennes se prêteront mutuelle assistance pour mener à bien toutes enquêtes nécessaires, pour rechercher la preuve, y compris par la production de témoins au procès et la saisie et la remise de pièces à conviction, celles-ci devant être ensuite restituées.

e) Lorsqu'un membre des forces françaises en transit est traduit devant un tribunal libyen, il a le droit :

— d'être promptement et rapidement jugé ;

— d'être informé, avant d'être traduit devant le tribunal, des charges relevées contre lui ;

— d'être confronté avec les témoins à charge ;

— d'user des moyens légaux permettant d'obliger à comparaître les témoins à décharge ;

— de faire appel à un défenseur de son choix ;

— de faire appel à un interprète qualifié ;

— de communiquer avec les autorités du gouvernement français dont un représentant aura la possibilité d'assister aux audiences.

f) Les autorités du gouvernement libyen communiqueront aux autorités françaises les jugements rendus par tout tribunal libyen à l'encontre d'un membre des forces françaises en transit.

IV. — *Documents d'identité.*

a) A l'entrée en territoire libyen, le chef du convoi devra être porteur d'un document indiquant :

— ses nom et grade ;

— les nom et grade de chaque membre du convoi ;

— le nombre et le type des véhicules ;

— les étapes envisagées ;

— la date présumée de sortie du territoire libyen.

Ce document sera visé par les autorités libyennes frontalières, qui pourront, si elles le désirent, en conserver copie, et servira de sauf-conduit collectif jusqu'à la sortie du territoire libyen.

b) En ce qui concerne les permis de conduire, le gouvernement libyen accepte de considérer comme valables les documents français dont sont réglementairement munis les chauffeurs.

Le gouvernement libyen n'exigera pas que les caractéristiques des véhicules en convois soient conformes aux dispositions légales en Libye.

De son côté le gouvernement français s'engage à prendre les précautions raisonnables pour éviter tout dommage aux biens ou aux personnes du fait d'un défaut de construction ou d'équipement des véhicules.

Je vous serais reconnaissant de bien vouloir me confirmer l'accord du gouvernement libyen sur les propositions qui précèdent.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : DEJEAN.

MINISTÈRE
DES AFFAIRES ÉTRANGÈRES
DU ROYAUME-UNI DE LIBYE

Tripoli, le 10 août 1955.

Excellence,

Vous avez bien voulu m'adresser au nom de votre gouvernement la lettre suivante :

....

(Suit le texte de la lettre précédente).

....

J'ai l'honneur de vous confirmer l'accord du gouvernement libyen sur ces propositions.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : Mustapha Ben HALIM.

ANNEXE IV

LÉGATION DE FRANCE
EN LIBYE

Tripoli, le 10 août 1955.

Excellence,

L'article 4 de la Convention particulière dispose que :

« Le gouvernement libyen autorise le gouvernement français à emprunter pour la relève, la maintenance et le ravitaillement des postes français de Fort-Saint et de Djanet les itinéraires actuellement utilisés dans ce but.

» Cette autorisation est accordée pour la période nécessaire à l'établissement de l'autre côté de la frontière des moyens de communication adéquats, conformément à l'échange de lettes ci-jointes (Annexe IV). »

1° Les itinéraires ci-dessus visés sont les suivants :

a) Pour le poste Fort-Saint :
Itinéraire qui, venant de la région de Remada, passe par le point nommé Touil Ali ben Amer à environ trente kilomètres au nord-est de Bir Zar, puis se dirige vers Sinaouen, Derj, Ghadames et Fort-Saint.

b) Pour le poste de Djanet :
Itinéraire qui, venant de la région de Fort-Polignac, se dirige vers El Aouinet, Ghat et rejoint la région de Tin Alkoum pour aboutir à Djanet.

2° La période nécessaire à l'établissement des moyens de communication devant remplacer ceux définis ci-dessus est fixée à deux années à compter de la signature de la Convention.

3° La fréquence et l'importance des convois devant emprunter les itinéraires ci-dessus définis seront au maximum de :

a) Itinéraire de Fort-Saint :
Un convoi par mois en moyenne, soit douze convois par an, comportant chacun au maximum dix véhicules transportant soixante hommes.

b) Itinéraire de Djanet :
Un convoi par mois en moyenne, soit douze convois par an, comportant chacun au maximum douze véhicules transportant cent hommes.

4° Ce transit s'effectuera dans les meilleurs délais possibles.

5° Si les circonstances rendent nécessaire le dépassement occasionnel des normes fixées au paragraphe 3° ci-dessus, le gouvernement libyen examinera avec sympathie les demandes que lui présentera à cet effet le gouvernement français.

6° Le régime juridictionnel prévu à l'Annexe III de la Convention particulière pour les personnels des forces françaises en transit par la piste n° 5 sera applicable aux personnels des forces françaises transitant par les itinéraires définis dans la présente lettre.

Je vous serais reconnaissant de bien vouloir me confirmer l'accord du gouvernement libyen sur les propositions qui précèdent.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : DEJEAN.

MINISTÈRE
DES AFFAIRES ÉTRANGÈRES
DU ROYAUME-UNI DE LIBYE

Tripoli, le 10 août 1955.

Excellence,

Vous avez bien voulu m'adresser au nom de votre gouvernement la lettre suivante :

……

(Suit le texte de la lettre précédente).

……

J'ai l'honneur de vous confirmer l'accord du gouvernement libyen sur ces propositions.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : Mustapha Ben HALIM.

ANNEXE V

LÉGATION DE FRANCE
EN LIBYE

Tripoli, le 10 août 1955.

Excellence,

Vous avez bien voulu m'adresser au nom de votre gouvernement la lettre suivante :

« Excellence,

» J'ai l'honneur, me référant au premier paragraphe de l'article 5 de la Convention particulière que nous avons signée aujourd'hui respectivement au nom du gouvernement libyen et du gouvernement français, de vous faire savoir que l'intention de mon gouvernement est de maintenir les aérodromes de Sebha, Ghat et Ghadamès dans leur état actuel d'utilisation générale, en vue de remplir les obligations internationales de la Libye dans le domaine de la navigation aérienne.

» A cet effet, au moment où il prendra possession des dits aérodromes, mon gouvernement offrira aux techniciens français qui s'y trouvent actuellement en service, des contrats, renouvelables, d'une durée de deux ans ; ces techniciens auront le statut des fonctionnaires étrangers au service du gouvernement libyen.

» Je saisis cette occasion pour proposer, au nom de mon gouvernement, que le gouvernement français rembourse en totalité au gouvernement libyen les dépenses engagées par ce dernier pour assurer le fonctionnement et l'entretien des installations techniques visées à l'article 5 mentionné ci-dessus, ainsi que pour rétribuer les techniciens de nationalité française employés sur ces aérodromes.

« Je dois ajouter que le gouvernement libyen considère avec sympathie le maintien sur lesdits aérodromes, pour toute la durée de ladite Convention, d'une majorité de techniciens français qui seront chargés de l'exploitation technique.

« Je propose enfin que le gouvernement français contribue à la formation professionnelle du personnel libyen appelé à coopérer dans l'avenir avec les techniciens français.

« J'ai l'honneur, au cas où vous accepteriez les déclarations et les propositions ci-dessus mentionnées, de proposer que cette lettre et votre réponse approuvant son contenu, constituent un accord entre nos deux gouvernements en la matière. »

J'ai l'honneur de vous confirmer l'accord du gouvernement français sur ces propositions.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : DEJEAN.

ANNEXE VI

LÉGATION DE FRANCE
EN LIBYE

Tripoli, le 10 août 1955.

Excellence,

L'article 5 de la Convention particulière dispose dans son second paragraphe que :

« En vue de faciliter les communications aériennes entre le Nord et le Centre de l'Afrique, et compte tenu de l'inexistence, au moment de la signature de la présente Convention, d'aérodromes français dans la région visée ci-dessus, le gouvernement libyen accordera, sur préavis, aux aéronefs militaires français, à compter de l'évacuation des forces françaises du Fezzan, le droit de survol et d'escale technique, pour une période de cinq ans, sur l'aérodrome de Sebha, et pour une période de deux ans sur les aérodromes de Ghat et de Ghadamès, dans les conditions et les limites prévues par l'échange de lettres ci-jointes (Annexe VI). »

Les conditions et les limites de ce droit d'escale sont les suivantes :

1. préavis de vingt-quatre heures, pour un maximum de quatre avions par mois en moyenne, ou cinquante par an ; en cas d'urgence grave la durée du préavis pourrait être réduite ;
2. si les circonstances rendent nécessaires le dépassement occasionnel des normes ci-dessus, le Gouvernement libyen examinera avec sympathie les demandes que lui présentera à cet effet le Gouvernement français ;
3. le personnel des avions militaires transitant par Sebha aura la possibilité d'y être hébergé pour la durée de l'escale technique ;
4. les dispositions qui précèdent s'appliquent également aux transports militaires par moyens aériens civils ;
5. le régime juridictionnel prévu à l'Annexe III de la Convention particulière s'appliquera aux personnels militaires transportés par les aéronefs visés ci-dessus.

Je vous serais reconnaissant de bien vouloir me confirmer l'accord du Gouvernement libyen sur les propositions qui précèdent.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : DEJEAN.

MINISTÈRE DES AFFAIRES
ÉTRANGÈRES
DU ROYAUME UNI DE LIBYE

Tripoli, le 10 août 1955.

Excellence,

Vous avez bien voulu m'adresser au nom de votre Gouvernement la lettre suivante :

……………………………………………

(Suit le texte de la lettre précédente)

……………………………………………

J'ai l'honneur de vous confirmer l'accord du Gouvernement libyen sur ces propositions.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : Mustapha BEN HALIM.

ANNEXE VII

LÉGATION DE FRANCE
EN LIBYE

Tripoli, le 10 août 1955.

Excellence,

Vous avez bien voulu m'adresser, au nom de votre Gouvernement, la lettre suivante :

« Excellence,

« Me référant à l'article 4 de la Convention de coopération économique que nous avons signée aujourd'hui au nom de nos Gouvernements respectifs, et me référant également à la conversation qui s'est déroulée entre nous au cours des négociations qui ont précédé la signature de la dite Convention, j'ai l'honneur de rappeler les bonnes dispositions dont vous avez bien voulu faire montre à l'égard de certains problèmes d'ordre financier que pose le désir de regagner définitivement leur pays d'origine et d'y amener leurs biens de certains réfugiés libyens résidant dans les territoires de la zone monétaire du franc français.

« Je prends, en remerciant Votre Excellence, note des assurances que la Délégation française a bien voulu donner à la Délégation libyenne, assurances selon lesquelles les dispositions de l'Article 4 de la Convention de coopération économique doivent permettre de résoudre, à la satisfaction des intéressés, la majorité des cas qui se poseraient dans l'avenir.

« Au moment où je prends note des dites assurances, je voudrais attirer la bienveillante attention de Votre Excellence sur d'autres cas qui pourraient se poser et pour lesquels la réglementation générale française des changes ne serait pas de nature à donner une solution complètement satisfaisante du fait que les biens ou les capitaux dont le transfert est demandé se trouvent excéder les limites fixées par la dite réglementation générale.

« Je serais particulièrement obligé à Votre Excellence de bien vouloir me confirmer l'intention de votre Gouvernement d'accueillir avec une bienveillante sympathie les demandes, portant sur des biens ou des fonds se trouvant dans une situation régulière vis-à-vis de la législation française, qui lui seraient adressées par les personnes intéressées en vue de l'obtention d'autorisations de transfert au cas où le montant de ces demandes excéderait les limites prévues par la réglementation française des changes ».

J'ai l'honneur de confirmer à Votre Excellence l'accord de mon Gouvernement sur les différents points évoqués par votre lettre.

Veuillez agréer, Excellence, les assurance de ma très haute considération.

Signé : Dejean.

ANNEXE VIII

Légation de France
en Libye

Tripoli, le 10 août 1955.

Excellence,

J'ai l'honneur de vous faire connaître que, dès l'évacuation totale des forces françaises du Fezzan, le Gouvernement français adoptera, en ce qui concerne les bâtiments occupés par des troupes, des services ou des techniciens français et les matériels indiqués dans les listes ci-jointes, les dispositions suivantes :

I. — Les bâtiments ex-italiens, ainsi que les bâtiments construits par les forces françaises à l'exception du groupe de bâtiments marqués « G » sur le plan ci-joint (1) — seront remis en pleine propriété aux autorités libyennes.

II. — Les bâtiments construits par les autorités civiles françaises et figurant en couleur jaune non rayée sur le plan ci-joint — à l'exception des bâtiments marqués « H » — deviendront propriété des autorités libyennes. Toutefois, le Gouvernement libyen s'engage à les affecter, pour la durée du Traité, au logement des fonctionnaires libyens de nationalité française.

III. — Les bâtiments marqués « G » deviendront propriété libyenne ; toutefois, pour toute la durée du Traité, le Gouvernement libyen les donnera en location au Gouvernement français contre paiement d'un loyer annuel d'une Livre libyenne, pour être utilisés aux fins visées par le paragraphe I alinéa 4 de l'échange de lettres annexées à la Convention particulière (Annexe III).

IV. — Les bâtiments marqués « H » qui abritent entre autres le Consulat de France, son personnel et ses dépendances, demeurent propriété française.

V. — Les bâtiments techniques et les logements du personnel des Services techniques des aérodromes (navigation aérienne et météorologie) demeureront à la disposition de ces Services dans les conditions définies par la convention particulière. Ces bâtiments et logements sont marqués « I » sur le plan.

VI. — Les armes, les munitions et le matériel radio, loués ou prêtés par les forces françaises à la police du Fezzan, demeureront à la disposition de celle-ci. Toutefois, si ces armes et ce matériel venaient à ne plus être — pour tout ou partie — en service effectif dans la police du Fezzan, ils devraient être remis aux autorités françaises.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : Dejean.

Ministère des Affaires
Etrangères
du Royaume Uni de Libye

Tripoli, le 10 août 1955.

Excellence,

Vous avez bien voulu m'adresser au nom de votre Gouvernement la lettre suivante :

……………………………………………………………

(Suit le texte de la lettre précédente)

……………………………………………………………

J'ai l'honneur de vous confirmer l'accord du Gouvernement libyen sur ces propositions.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Signé : Mustapha Ben Halim.

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(1) Ce plan n'est pas reproduit dans la présente étude.

ان رئيس الجمهورية الفرنسية

وصاحب الجلالة ملك المملكة الليبية المتحدة؛

رغبة منهما في تأكيد الصداقة والمصلحة المشتركة القائمتين بين الجمهورية الفرنسية والمملكة الليبية المتحدة ، بهذه المعاهدة .

واعتقادا منهما في ان معاهدة صداقة وحسن جوار معقودة بروح التفاهم المتبادل وعلى اساس كامل من المساواة والاستقلال والحرية ستسهل تنظيم كافة المسائل التي يفرضها على البلدين موقعهما الجغرافي ومصالحهما في افريقيا والبحر الابيض المتوسط .

ورغبة منهما في تبادل المساعدة والتعاون سواء فيما بينهما او مع الامم الاخرى تعاونا وثيقا لاقرار السلام ومقاومة الاعتداء وفقا لميثاق الامم المتحدة .

وأخيرا بما انه تحدوهما الرغبة في توثيق العلاقات الاقتصادية والثقافية وحسن الجوار بين

بلديهما لمصلحتهما المشتركة ولمصلحة الرخاء العام .

قد عزما على عقد معاهدة لهذه الغاية وعينا مفوضين عنهما :

رئيس الجمهورية الفرنسية
بالنيابة عن الجمهورية الفرنسية
صاحب السعادة المسيو موريس دجان
سفير فرنسا

صاحب الجلالة ملك المملكة الليبية المتحدة
بالنيابة عن المملكة الليبية المتحدة
صاحب الدولة السيد مصطفى بن حليم
رئيس الوزراء ووزير الخارجية للمملكة الليبية المتحدة

اللذين بعد ان ابرز كل منهما اوراق تفويضه التام فوجدت صحيحة وبالشكل الاصولي ، اتفقا على الاحكام التالية :

المادة ١

يسود سلم وصداقة دائمان بين الجمهورية الفرنسية والمملكة الليبية المتحدة .

يتشاور الفريقان الساميان المتعاقدان كلما دعت الى ذلك مصالحهما المشتركة . ويعملان في علاقاتهما المتبادلة وفقا للمبادئ المنصوص عليها في المادة الثانية من ميثاق الامم المتحدة .

لا يرتبط الفريقان الساميان المتعاقدان بالالتزام يتنافى مع احكام هذه

المتعاقدة و [illegible]
الاخر ، مع اخذ احكام المادة السابعة ادناه بعين الاعتبار ·

المادة ٢

يمثل كل من الفريقين الساميين المتعاقدين لدى الفريق الاخر ممثل دبلوماسي يعتمد بالطرق الاصولية ·

المادة ٣

يعترف الفريقان الساميان المتعاقدان بان الحدود الفاصلة بين اراضي القطر التونسي والقطر الجزائري وافريقيا الغربية الفرنسية وافريقيا الاستوائية الفرنسية من جهة وبين اراضي ليبيا من جهة اخرى هي الحدود الناتجة عن المعاهدات الدولية النافذة بتاريخ نشوء المملكة الليبية المتحدة · كما حددت بتبادل الرسالتين المرفقتين (الملحق ١) ·

المادة ٤

يتعهد الفريقان الساميان المتعاقدان ، نظرا للالتزامات المتبادلة بينهما الناتجة عن موقعهما الجغرافي ، باتخاذ كل في اراضيه ، جميع التدابير اللازمة

لاقرار السلام والامن في المنطقة المجاورة للحدود المبينة في المادة السابقة والاحتفاظ فيما بينهما بعلاقات حسن جوار .

ولهذه الغاية عقد الفريقان الساميان المتعاقدان اتفاقية خاصة واتفاقية حسن جوار مرفقتين كملحقين بهذه المعاهدة .

المادة ٥

في حالة ما اذا وجد احد الفريقين الساميين المتعاقدين نفسه مشتركا في حرب ناشئة عن اعتداء مسلح ، تشمل اراضي القارة الافريقية الكائنة في النصف الشمالي من الكرة الارضية ، من جانب دولة اخرى او في حالة تهديد داهم بمثل هذا الاعتداء ، يتشاور الفريقان الساميان المتعاقدان ليؤمن كل منهما الدفاع عن اراضيه . وتشمل الاراضي فيما يخص فرنسا الاراضي التي تتولى فرنسا الدفاع عنها المجاورة لليبيا اى القطر التونسي ، والقطر الجزائري ، وافريقيا الغربية الفرنسية وافريقيا الاستوائية الفرنسية . وتشمل الاراضي فيما يخص ليبيا الاراضي الليبية كما ورد تحديدها فى المادة الثالثة من هذه المعاهدة .

المادة ٦

يعمل الفريقان الساميان المتعاقدان على توثيق العلاقات الاقتصادية والثقافية بينهما بالشروط الواردة في اتفاقية التعاون الاقتصادي والاتفاقية الثقافية المرفقتين بهذه المعاهدة .

المادة ٧

لا تخل هذه المعاهدة بالحقوق والالتزامات المترتبة على الفريقين الساميين المتعاقدين بموجب احكام ميثاق الامم المتحدة او بموجب اية معاهدات او عهود او اتفاقيات اخرى نشرت نشرا اصوليا بما في ذلك، فيما يخص المملكة الليبية المتحدة ، ميثاق جامعة الدول العربية .

المادة ٨

ترفع الخلافات التي قد تنشأ من تفسير او تطبيق هذه المعاهدة والتي قد لا يمكن حلها عن طريق مفاوضات مباشرة الى محكمة العدل الدولية بناء على طلب احد الفريقين الا اذا اتفق الفريقان الساميان المتعاقدان على طريقة اخرى لحلها .

المادة ٩

في الاتفاقيات والملاحق المرفقة بهذه المعاهدة والتي تكون جزءا لا يتجزأ منها تعني عبارة " الحكومة الفرنسية " حكومة الجمهورية الفرنسية وتعني عبارة " الحكومة الليبية " " حكومة المملكة الليبية المتحدة .

المادة ١٠

تبرم هذه المعاهدة وتوضع موضع التنفيذ بتاريخ تبادل وثائق الابرام الذي يتم بباريس في اقرب وقت ممكن .

المادة ١١

عقدت هذه المعاهدة لمدة عشرين سنة ويجوز للفريقين الساميين المتعاقدين التشاور في اي وقت كان لغرض اعادة النظر في هذه المعاهدة ويكون هذا التشاور الزاميا في نهاية السنوات العشر التي تلي نفاذها ويجوز لكل من الفريقين ان ينهي هذه المعاهدة بعد عشرين سنة من تاريخ وضعها موضع التنفيذ او في اي وقت بعد ذلك باشعار سابق مدته سنة يوجهه الى الفريق الاخر ·

واقرارا لذلك وقع المفوضان المذكوران اعلاه على هذه المعاهدة وعلى ملحقاتها من الاتفاقيات والرسائل المتبادلة ومهراها بختميهما ·

حرر بطرابلس في العاشر من اغسطس ١٩٥٥ في صورتين اصليتين باللغتين الفرنسية والعربية وكلا النصين متساو في صحته ·

عن حكومة المملكة الليبية المتحدة   عن حكومة الجمهورية الفرنسية

[redacted]

را بلس في ١٠\ اغسطس ١٩٥٥

يا صاحب السعادة ،

اتشرف باحاطة سعادتكم علما بتسلم رسالتكم بتاريخ اليوم التي نصها كما يلي :-

" تنص المادة ٣ من معاهدة الصداقة وحسن الجوار بين فرنسا وليبيا على ما يلي :-

" يعترف الفريقان الساميان المتعاقدان بأن الحدود الفاصلة بين اراضي ليبيا من جهة وبين اراضي القطر التونسي والقطر الجزائري وافريقيا الغربية الفرنسية وافريقيا الاستوائية الفرنسية من جهة اخرى هي الحدود الناتجة من المستندات الدولية النافذة بتاريخ نشوء المملكة الليبية المتحدة ، كما حددت بتبادل الرسالتين المرفقتين (الملحق ١)

والمقصود هي النصوص الآتية :-

- الاتفاقية الفرنسية البريطانية المؤرخة في ١٤ يونيو ١٨٩٨
- التصحيح الاضافي للاتفاقية المتقدم ذكرها المؤرخ في ٢١ مارس ١٨٩٩
- الاتفاقات الفرنسية الايطالية المؤرخة في اول نوفمبر ١٩٠٢

٠٢/٠٠

ضرة صاحب السعادة السفير
المسيو موريس دوجان
رئيس وفد الخارجية الفرنسي
طرابلس

- الاتفاقية بين الجمهورية الفرنسية والباب العالي المؤرخة في ١٢ مايو ١٩١٠ ·
- الاتفاقية الفرنسية البريطانية المؤرخة في ٨ سبتمبر ١٩١٩ ·
- التسوية الفرنسية الايطالية المؤرخة في ١٢ سبتمبر ١٩١٩ ·

وفيما يخص التسوية المذكورة اخيرا وفقا للمبادئ المنصوص عليها فيها فقد اعترف الطرفان بأن خط الحدود بين غات وتومو يمر بالنقاط الثلاث الاتية ، أي عقبة تخرخوري وممر آنلي ونقطة الارتفاع ١٠١٠ (قارة ذرية الجمل) ·

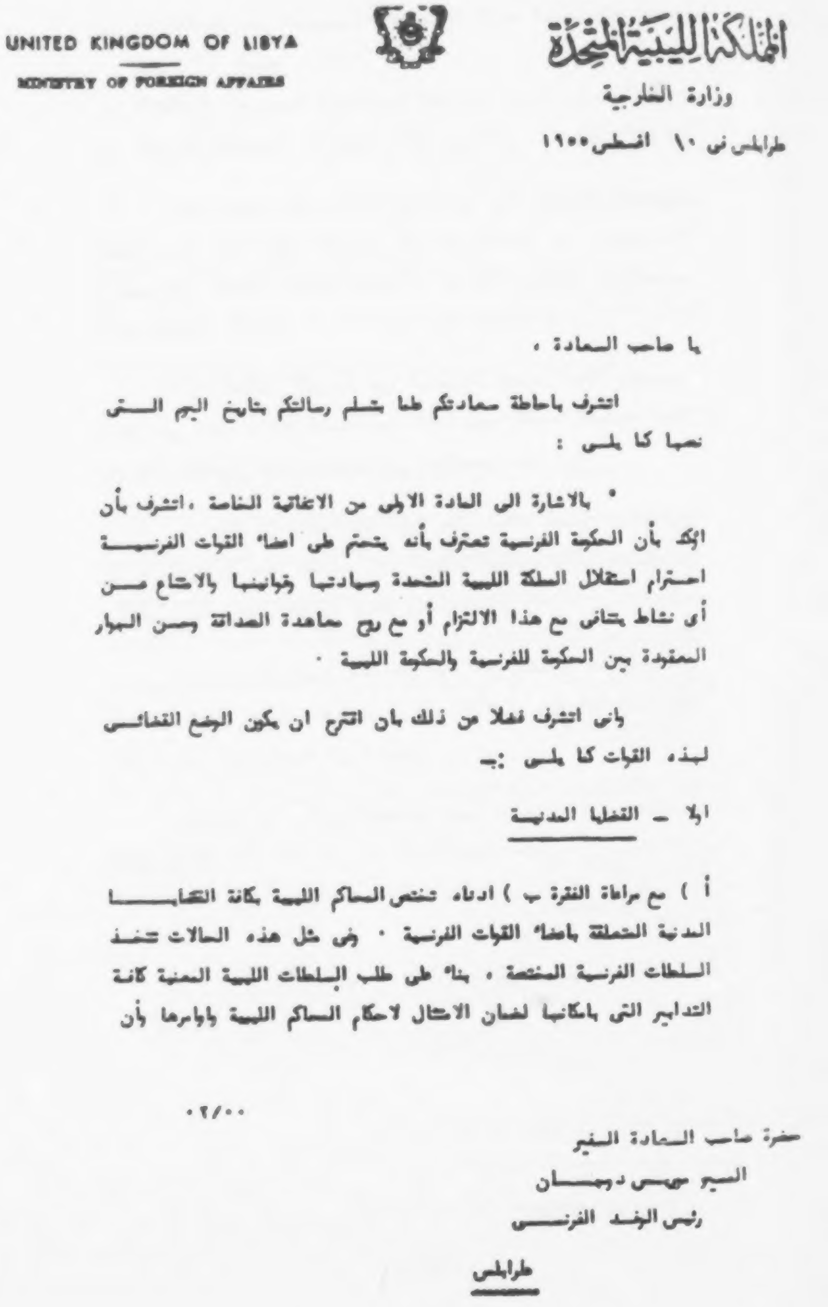
ان الحكومة الفرنسية على استعداد لتعيين خبراء يكونون اعضاء في لجنة مختلطة فرنسية ليبية تكلف بوضع علامات الحدود حيثما لم يتم هذا العمل وحيثما ترى احدى الحكومتين ذلك لازما ·

وفي حالة الاختلاف اثناء عملية وضع علامات الحدود يعين كل من الفريقين حكما محايدا واذا اختلف الحكمان فيعين هذان الاثنان حكما مرجحا محايدا كذلك يحسم النزاع ·

اتشرف بان احيط سعادتكم علما بان محتويات رسالتكم المتقدم نصها تطابق تماما ما تم عليه الاتفاق بيننا اثناء المحادثات التي دارت بين وفدينا في الموضوع ·

وتفضلوا يا صاحب السعادة بقبول شعور احترامي الفائق ·

(مصطفى بن حليم)
رئيس الوزراء ووزير الخارجية



UNITED KINGDOM OF LIBYA
MINISTRY OF FOREIGN AFFAIRS

المملكة الليبية المتحدة
وزارة الخارجية

طرابلس في ١٠ اغسطس ١٩٥٥

يا صاحب السعادة ،

اتشرف باحاطة سعادتكم علما بتسلم رسالتكم بتاريخ اليوم التي نصها كما يلي :

" بالاشارة الى المادة الاولى من الاتفاقية الخاصة ، اتشرف بأن اؤكد بأن الحكومة الفرنسية تعترف بأنه يتحتم على اعضاء القوات الفرنسية احترام استقلال المملكة الليبية المتحدة وسيادتها وقوانينها والامتناع عن أي نشاط يتنافى مع هذا الالتزام أو مع روح معاهدة الصداقة وحسن الجوار المعقودة بين الحكومة الفرنسية والحكومة الليبية .

واني اتشرف فضلا عن ذلك بان اقترح ان يكون الوضع القضائي لهذه القوات كما يلي :-

اولا – القضايا المدنية

أ) مع مراعاة الفقرة ب) ادناه تختص المحاكم الليبية بكافة القضايا المدنية المتعلقة باعضاء القوات الفرنسية . وفي مثل هذه الحالات تتخذ السلطات الفرنسية المختصة ، بناء على طلب السلطات الليبية المعنية كافة التدابير التي بامكانها لضمان الامتثال لاحكام المحاكم الليبية واوامرها وأن

..٢/..

حضرة صاحب السعادة السفير
السيد موريس دجان
رئيس الوفد الفرنسي
طرابلس

تساعد في حدود ما تسمح به اعتبارات الامن ، السلطات الليبية في تنفيذ تلك الاحكام والاوامر . ولكن لا يخضع عضو القوات الفرنسية لحكم محكمة او لامر ضبط يعرضه للانصراف من الخدمة ولا يكون تنفيذ مثل هذا الامر او الحكم ضد شخصه او راتبه او اسلحته وذخائره او معداته .

ب) تدفع الحكومة الفرنسية تعويضا عادلا عن الاضرار التي تنتج من قيام اعضاء القوات الفرنسية بواجباتهم . ولا تنظر المحاكم في مثل هذه القضايا .

ج) تدفع الحكومة الليبية تعويضا عادلا عن الاضرار التي تلحق بالقوات الفرنسية او باعضائها اثناء تادية واجباتهم نتيجة لعمل اشخاص تستخدمهم الحكومة الليبية مباشرة .

ثانيا ـ القضايا الجنائية

أ) مع مراعاة نصوص الفقرة ب) ادناه يكون الاختصاص للمحاكم الليبية الا اذا تنازلت الحكومة الليبية عن حق هذه المحاكم في ممارسة اختصاصها . وتنظر الحكومة الليبية بعين العطف في كل طلب تقدمه السلطات الفرنسية قصد تنازل المحاكم الليبية في الاحوال التي تعلق فيها هذه السلطات اهمية كبيرة على هذا التنازل او عندما يكون بالامكان تطبيق عقوبة مناسبة باتخاذ اجراءات تأديبية دون اللجوء الى محكمة . وفي هذه الحالة الاخيرة تحيط الحكومة الفرنسية الحكومة الليبية علما بتلك العقوبة .

ب) يجوز لمحاكم حكومة الجمهورية الفرنسية وسلطاتها أن تمارس اختصاصها وسلطتها على اعضاء القوات الفرنسية كما تمنحها لها القوانين الفرنسية في الحالات الآتية وهي :ـ

١) الجرائم او الجنح التى ترتكب ضد اموال الحكومة الفرنسية او ضد شخص عضو آخر من اعضاء القوات الفرنسية او ضد ماله .

٢) الجرائم او الجنح التى ترتكب داخل المراكز الفرنسية وحدها .

٣) الجرائم او الجنح التى تمس أمن الحكومة الفرنسية وحدها بما فى ذلك الخيانة وأعمال التخريب وخرق أى قانون يتعلق بحماية السر او الاسرار التى لها صلة بالدفاع الوطنى من الجمهورية الفرنسية .

٤) الجنح المترتبة على أى فعل او تقصير يرتبط ارتباطا خصوصا على اداء الواجب .

وفى كل هذه الحالات التى يتوفر فيها لفرنسا هذا الاختصاص او هذه السلطة لا يخضع اعضاء القوات الفرنسية لاختصاص المحاكم الليبية .

جـ) تتعاون السلطات الفرنسية والسلطات الليبية فى القبض على اعضاء القوات الفرنسية وتسليمهم الى السلطات المختصة قصد محاكمتهم وفقا للاحكام الواردة اعلاه . وتخبر السلطات الليبية في الحال السلطات الفرنسية بالقاء القبض على عضو من اعضاء القوات الفرنسية . واذا قبض على احد اعضاء القوات الفرنسية وطلبت السلطات الفرنسية الافراج عنه رهن المحاكمة تسلمه السلطات الليبية لحراسة السلطات الفرنسية على شرط ان تتعهد هذه الاخيرة بتقديم الشخص المعنى الى المحاكم الليبية لاجراءات التحقيق او للمحاكمة .

د) تتعاون السلطات الفرنسية والسلطات الليبية على اتمام جميع التحقيقات اللازمة وجمع الادلة بما فى ذلك حضور الشهود وقت المحاكمة وضبط الاشياء المتعلقة بالجريمة وتسليمها على ان تعاد فيما بعد .

هـ) يحق لأي عضو من اعضاء القوات الفرنسية عندما يمثل امـام محكمة ليبيـة :-

١) ان يحاكم دون ابطاء محاكمة سريعة
٢) ان يخبر قبل مثوله امام المحكمة بالتهم الموجهة له ·
٣) ان يواجه بشهود الاثبات ضده
٤) ان يتمتع بالاجراءات السريعة لاحضار الشهود في صالحه
٥) ان يختار من يدافع عنه
٦) ان يحصل على خدمات مترجم قدير
٧) ان يتصل بسلطات الحكومة الفرنسية ويحضر الجلسات ممثل من تلك السلطـات ·

و) تبلغ السلطات الليبية الاحكام الصادرة من اية محكمة ليبية ضد عضو من القوات الفرنسية ، الى السلطات الفرنسية ·

ز) يحق للحكومة الفرنسية ان تحفظ الامن داخل المراكز الفرنسية وان تصون النظام فيها وان تقبض على الذين تنسب اليهم جنايـة وان تسلمهم في حالة ما اذا كان هؤلاء خاضعين لاختصاص المحاكم الليبية الى السلطات الليبية لمحاكمتهم ·

واخيرا اقترح خلافا لما ورد في المادة السادسة من الاتفاقية الخاصة ان توضع احكام هذه الرسالة موضع التنفيذ ابتداء من التوقيع على تلك الاتفاقيـة ·

اكون ممتنا لكم اذا تكرمتم بتأكيد موافقة الحكومة الليبية علـى المقترحات المتقدمة "

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وردا عليها اتشرف بأن اؤكد لسعادتكم بأن الحكومة الليبية توافق على المقترحات المقدمة .

ارجوكم ، يا صاحب السعادة ، قبول شعور احترامي الفائق .

(مصطفى بن حليم)
رئيس الوزراء ووزير الخارجية

UNITED KINGDOM OF LIBYA
MINISTRY OF FOREIGN AFFAIRS

المملكة الليبية المتحدة
وزارة الخارجية

طرابلس في ١٠ اغسطس ١٩٥٥ .

يا صاحب السعادة ،

اتشرف باحاطة سعادتكم علما بتسلم رسالتكم بتاريخ اليوم والتي نصها كما يلي : –

" تنص المادة ٣ من الاتفاقية الخاصة على ما يلي :–

" تتلقى الحكومة الليبية بعين الاعتبار في الحدود المبينة في رسالة تفسيرية (الملحق ٣) الطلبات التي تقدمها اليها الحكومة الفرنسية لغرض مرور القوافل العسكرية الفرنسية الذاهبة الى تشاد او العائدة منها على الطريق رقم ٥ . وتعين الرسالة التفسيرية ايضا تفصيلات الطريق المسماة برقم ٥ ، كما تعين النظام القضائي الذى يطبق على القوات الفرنسية اثناء مرورها " .

أولا – تكون الحدود المعنية كما يلي : –

– يكون الحد الاقصى لفترات المرور : قافلة واحدة كل شهرين في المتوسط ، او ما مجموعه ست قوافل في السنة .

– يجب ان لا يتجاوز عدد سيارات كل قافلة الثلاثين سيارة .

– يبلغ مجموع الاعضاء العسكريين الذين تتألف منهم كل قافلة حدا اقصى قدره مائة وخمسين رجلا .

../٢.

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– يجوز للقوافل ان تتوقف التوقف اللازم لراحة رجالها وصيانة معداتها ، ولتزودها بالماء والمؤن والوقود .

– يجب ان لا تتجاوز مدة مرور كل قافلة عبر الاراضي الليبية اثني عشر يوما الا في الظروف القاهرة .

ثانيا – ان الطريق رقم ٥ هو الطريق الذى يأتي من منطقة رمادة عبر بالنقطة المساة طوّيل طي بن عامر على بعد ثلاثين تقريبا كيلو مترا/شمال شرقي بئر زار ثم يتجه نحو سيناون ودرج وبئر الغزيّل ومنطقة عوينة ونّين وسهر بن غنين وكبير وسبها وام الارانب ومنطقة مجدول والقطرون وتومق الكبير ويدخل بالاراضي التشادية في منطقة مورى اديه مع ما قد تحتمه حالة الطريق المبين اعلاه من انحراف يسهل المرور .

وفي حالة ما اذا انشئ في المستقبل طريق جديد يؤمن نفس المواصلات ويقرب المسافة او يكون اخف ضررا على المعدات ، فيجوز للقوافل المذكورة ان تستعمله كليا او جزئيا بعد موافقة الحكومة الليبية .

ثالثا – النظام القضائي للقوات الفرنسية اثناء مرورها .

اتشرف بان اؤكد ان الحكومة الفرنسية تعترف بانه يتحتم على اعضاء القوات الفرنسية المارة احترام استقلال المملكة الليبية وسيادتها وقوانينها والامتناع عن اى نشاط يتنافى مع هذا الالتزام او مع روح معاهدة الصداقة وحسن الجوار المعقودة بين الحكومة الفرنسية والحكومة الليبية .

وفضلا عن ذلك فاني اقترح ان يكون النظام القضائي الذى يطبق على القوات الفرنسية اثناء مرورها بالشروط المبينة في رسالتي هذه ، نفس النظام الذى يطبق على القوات الفرنسية

الموجودة بفزان كما هو محدد فى الملحق ٢ من الاتفاقية الخاصة وذلك حتى نهاية الاجل المحدد لجلاء القوات الفرنسية المذكورة . وعند انتهاء هذا الاجل أى ابتداء من اول ديسمبر ١٩٥٦ على اقصى تقدير توضع الاحكام الاتية موضع التنفيذ :

١) القضايا المدنية

أ) مع مراعاة الفقرة ب) ادناه تختص المحاكم الليبية بكافة القضايا المدنية المتعلقة باعضاء القوات الفرنسية المارة . وفى مثل هذه الحالات تتخذ السلطات الفرنسية المختصة ، بناء على طلب السلطات الليبية المعنية كافة التدابير التى بامكانها لضمان الامتثال لاحكام المحاكم الليبية واوامرها وتساعد فى حدود ما تسمح به اعتبارات الامن السلطات الليبية فى تنفيذ تلك الاحكام والاوامر . ولكن لا يخضع عضو القوات الفرنسية لحكم محكمة او لامر منها يعرضه للانحراف عن الخدمة ولا يكون تنفيذ مثل هذا الامر او الحكم ضد شخصه او راتبه او اسلحته وذخائره او معداته ، على ان يبقى مفهوما ان الحكومة الفرنسية تضمن تنفيذ ما ذكر من حكم او امر .

ب) تدفع الحكومة الفرنسية تعويضا عادلا عن الاضرار التى تنتج من قيام اعضاء القوات الفرنسية المارة بواجباتها .

جـ) تدفع الحكومة الليبية تعويضا عادلا عن الاضرار التى تلحق بالقوات الفرنسية المارة او باعضائها اثناء تأدية واجباتهم نتيجة لعمل اشخاص تستخدمهم الحكومة الليبية مباشرة .

٢) القضايا الجنائية

أ) مع مراعاة نصوص الفقرة ب) ادناه تختص المحاكم الليبية بكافة القضايا الجنائية المتعلقة باعضاء القوات الفرنسية الا اذا تنازلت الحكومة الليبية من حق هذه المحاكم فى ممارسة اختصاصها .

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ب) تمارس المحاكم الفرنسية اختصاصها على اعضاء القوات الفرنسية المارة في الحالات الاتية وهي :-

الجرائم والجنح التي ترتكب ضد اموال الحكومة الفرنسية او ضد شخص عضو اخر من اعضاء القوات الفرنسية المارة او ضد ماله ·

الجرائم او الجنح التي تمس امن الحكومة الفرنسية وحدها بما في ذلك الخيانة واعمال التخريب وخرق اي قانون يتعلق بحماية السر او الاسرار التي لها صلة بالدفاع الوطني من الجمهورية الفرنسية ·

الجنح المترتبة على اي فعل او تقصير يرتبط ارتباطا مقصورا على اداء الواجب · وفيما يتعلق بمثل هذه الجنح يصدر الممثل الدبلوماسي لفرنسا بليبيا شهادة تعتمدها المحاكم الليبية ·

ج) تتعاون السلطات الفرنسية والسلطات الليبية في القبض على اعضاء القوات الفرنسية وتسليمهم الى السلطات المختصة قصد محاكمتهم وفقا للاحكام الواردة اعلاه ، وتخبر السلطات الليبية في الحال السلطات الفرنسية بالقاء القبض على عضو من اعضاء القوات الفرنسية المارة · وينقل مثل هذا العضو في اقرب وقت الى مكان توجد فيه سلطة محلية فرنسية لكيما تتصل هذه الاخيرة به في الحال ·

د) تتعاون السلطات الفرنسية مع السلطات الليبية على اتمام جميع التحقيقات اللازمة وجمع الادلة بما في ذلك حضور الشهود وقت المحاكمة وضبط الاشياء المتعلقة بالجريمة وتسليمها على ان تعاد فيما بعد ·

هـ) يحق لاي عضو من اعضاء القوات الفرنسية عندما يمثل امام محكمة ليبية :-

- ان يحاكم دون ابطاء محاكمة سريعة
- ان يخبر قبل مثوله امام المحكمة بالتهم الموجهة اليه
- ان يواجه بشهود الاثبات ضده

..٥/..

- ان يتمتع بالاجراءات المجبرة لاحضار الشهود فى صالحه
- ان يختار من يدافع عنه
- ان يحصل على خدمات مترجم قدير
- ان يتصل بسلطات الحكومة الفرنسية ويكون بامكان ممثل من تلك السلطات حضور الجلسات .

و) تبلغ السلطات الليبية الاحكام الصادرة من اية محكمة ليبية ضد عضو من القوات الفرنسية الى السلطات الفرنسية .

رابعا ـ وثائق التعريف

أ) يجب ان يحمل رئيس القافلة عند دخوله الاراضى الليبية وثيقة تبين : ـ

- اسمه ورتبته
- اسم ورتبة كل عضو من اعضاء القافلة
- عدد ونوع السيارات
- المراحل المتوقعة
- التاريخ المحتمل للخروج من الاراضى الليبية

وتؤشر سلطات الحدود الليبية على هذه الوثيقة ولها ان تحتفظ بصورة منها اذا رغبت فى ذلك وتكون الوثيقة بمثابة جواز جماعى حتى الخروج من الاراضى الليبية .

ب) اما فيما يخص رخص قيادة السيارات فتقبل الحكومة الليبية ان تعتبر صحيحة الوثائق الفرنسية التى يحملها سائقوا السيارات حسب الاصول .

ولا تتمسك الحكومة الليبية بان تكون خصائص السيارات مطابقة لما ينص عليه القانون الليبى .

وتتعهد الحكومة الفرنسية من جانبها باتخاذ الاحتياطات المعقولة لتفادى الحاق الضرر بالاموال او الاشخاص نتيجة لعيب فى تصميم او تجهيز السيارات .

٠٦/٠٠

وانى اكون ممتنا لكم اذا تكرمتم بتأكيد موافقة الحكومة الليبية على المقترحات المتقدمة .

وردا عليها اتشرف باحاطتكم علما بان الحكومة الليبية توافق على المقترحات المتقدمة .

وارجوكم ، ياصاحب السعادة ، قبول احترامي الفائق .

(مصطفى بن حليم)
رئيس مجلس الوزراء ووزير الخارجية

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MINISTRY OF FOREIGN AFFAIRS

المملكة الليبية المتحدة
وزارة الخارجية

طرابلس في ١٠ اغسطس ١٩٥٥

يا صاحب السعادة ،

اتشرف باحاطة سعادتكم علما بتسلم رسالتكم بتاريخ اليوم التي نصها كما يلي :-

"تنص المادة الرابعة من الاتفاقية الخاصة على ما يلي :-

" تصرح الحكومة الليبية للحكومة الفرنسية باستخدام الطرق المستعملة حاليا لابدال الجنود وصيانة وتموين مركزي غوسان وجانت الفرنسيين .

ويمنح هذا التصريح للمدة اللازمة لانشاء وسائل المواصلات الكافية في الناحية الاخرى من الحدود ، وفقا للرسالتين المتبادلتين المرفقتين (الملحق ٤) .

اولا - ان الطرق المشار اليها اعلاه هي الاتية :-

أ) لناحية غوسان :-

الطريق الاتي من منطقة ربادة يمر في النقطة المسماة طهّل طس بن عامر على مسافة ثلاثين كيلو مترا تقريبا من الشمال الشرقي من بئر زار ويتجه بعد ذلك نحو سيناون ودرج وغدامس وغوسان .

ب) لناحية جانت :-

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الطريق الاتى من منطقة فور بولنياك ويتجه نحو العوينات وغات ويخترق منطقة تين الكوم لينتهى بجانت ·

ثانيا - وتحدد المدة اللازمة لانشاء طرق المواصلات التى يجب ان تحل محل طرق المواصلات المشار اليها اعلاه بسنتين ابتداء من التوقيع على الاتفاقية ·

ثالثا - وتكون الفترات وتكوين القوافل التى تستخدم الطرق المحددة اعلاه كما يلى كحد اقصى :-

أ) طريق فورسان :-

قافلة واحدة فى الشهر فى المتوسط اى اثنتا عشرة قافلة فى السنة تتكون كل منها على اقصى تقدير من عشر سيارات تحمل ستين رجلا ·

ب) طريق جانت :-

قافلة واحدة فى الشهر فى المتوسط اى اثنتا عشرة قافلة فى السنة تتكون كل منها على اقصى تقدير من ١٢ سيارة تحمل مائة رجل ·

رابعا - يتم هذا المرور فى اسرع وقت ممكن ·

خامسا - واذا ما دعت الظروف الى ضرورة تجاوز القواعد المبينة فى الفقرة الثالثة اعلاه من حين لاخر ، تنظر الحكومة الليبية بعين العطف فى الطلبات التى تقدمها اليها الحكومة الفرنسية لهذه الغاية ·

سادسا - ويطبق النظام القضائى المنصوص عليه فى الملحق ٣ من الاتفاقية الخاصة باعضاء القوات الفرنسية المارة على الطريق رقم ٥ ، على اعضاء هذه القوات المارة على

الطرق المحددة في هذه الرسالة .

اكون ممتنا لكم اذا تكرمتم بتأكيد موافقة الحكومة الليبية على المقترحات المتقدمة ."

وردا عليها اتشرف بأن اؤكد لسعادتكم ان الحكومة الليبية توافق على المقترحات المتقدمة .

ارجوكم ، يا صاحب السعادة ، تقبل شعور احترامي الفائق .

مصطفى بن حليم
رئيس الوزراء ووزير الخارجية

UNITED KINGDOM OF LIBYA
MINISTRY OF FOREIGN AFFAIRS

المملكة الليبية المتحدة
وزارة الخارجية

طرابلس في ١٠ اغسطس ١٩٥٥

ياصاحب السعادة،

اشير الى الفقرة الاولى من المادة الخامسة من الاتفاقية الخاصة التي وقعنا عليها اليوم باسم الحكومة الليبية والحكومة الفرنسية على التوالي واتشرف باحاطتكم علما بانه في نية حكومتي ان تحتفظ بمطارات سبها وغات وغدامس في مستواها الحالي للاستعمال العام من اجل القيام بالتزامات ليبيا الدولية في ميدان الملاحة الجوية .

ولهذه الغاية تقدم حكومتي عند استلامها المطارات المذكورة للفنيين الفرنسيين الذين يعملون حاليا في خدمة هذه المطارات عقود خدمة مدتها سنتان قابلة للتجديد ويكون لهؤلاء الفنيين حالة الموظفين الاجانب الذين تستخدمهم الحكومة الليبية .

وانتهز هذه الفرصة لاقترح باسم حكومتي ان تسدد الحكومة الفرنسية الى الحكومة الليبية كافة المبالغ التي تنفقها هذه الاخيرة لضمان تسيير وصيانة المنشآت الفنية المشار اليها في المادة الخامسة المذكورة اعلاه وكذلك دفع رواتب الفنيين الفرنسيين المستخدمين في هذه المطارات .

واني ارى ان اضيف ان الحكومة الليبية تنظر بعين العطف الى الاحتفاظ بالبقية من الفنيين الفرنسيين الذين سيكلفون بالادارة الفنية في تلك المطارات طول مدة الاتفاقية المذكورة .

واني اقترح اخيرا ان تساهم الحكومة الفرنسية في اعداد الموظفين الليبيين الذين سيدعون في المستقبل الى التعاون مع الفنيين الفرنسيين اعدادا فنيا .

فاذا كان ماتقدم من التصريحات والمقترحات مقبولا لديكم فانني اتشرف بان اقترح على سعادتكم ان تؤلف هذه الرسالة وردكم عليها بالقبول اتفاقية بين حكومتينا في هذا الخصوص.

حضرة صاحب السعادة السفير
السيو موريس دوجيان
رئيس الوفد الفرنسي
طرابلس

ارجوكم ياصاحب السعادة قبول شعور احترامي الفائق ،

(مصطفى بن حليم)
رئيس الوزراء ووزير الخارجية

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المملكة الليبية المتحدة
وزارة الخارجية

طرابلس فى أغسطس ١٩٥٥

يا صاحب السعادة ،

اتشرف باحاطة سعادتكم علما بتسلم رسالتكم بتاريخ اليوم والتى نصها كما يلى :

" تنص المادة الخامسة من الاتفاقية الخاصة فى فقرتها الثانية على ما يلى :

" رغبة فى تسهيل المواصلات الجوية الفرنسية بين شمال واواسط افريقيا ونظرا لعدم توفر مطارات فرنسية فى هذه المنطقة فى وقت التوقيع على هذه الاتفاقية ، تمنح الحكومة الليبية ، بناء على اشعار سابق ، للطائرات العسكرية الفرنسية ، ابتداء من جلاء القوات الفرنسية من فزان ، حق التحليق والهبوط الفنى فى مطار سبها لمدة خمس سنوات وفى مطارى غات وغدامس لمدة سنتين بالشروط والحدود المبينة فى الرسالتين المتبادلتين المرفقتين (الملحق ٦) " .

ان شروط وحدود هذا الحق فى الهبوط الفنى تكون كالاتى :

اولا – اشعار سابق مدته ٢٤ ساعة لعدد اربع طائرات فى الشهر فى المتوسط اى ٥٠ طائرة فى السنة كحد اقصى ، فى حالة الضرورة القصوى يجوز تقصير مدة هذا الاشعار .

ثانيا – اذا دعت الظروف الى ضرورة تجاوز القواعد المذكورة اعلاه من حين لاخر ، تنظر الحكومة الليبية بعين العطف فى الطلبات التى تقدمها اليها الحكومة الفرنسية لهذه الغاية .

حضرة صاحب السعادة المسيو
المسيو موريس دوجان
رئيس الوفد الفرنسى
طرابلس .

ثالثاً — يجوز لملاحي الطائرات العسكرية المارة بسمائها ان يتجسوا بها اثناء الهبوط الفني .

رابعاً — تطبق الاحكام السابقة كذلك على طائرات النقل المدنية المستعملة لاغراض النقل العسكري .

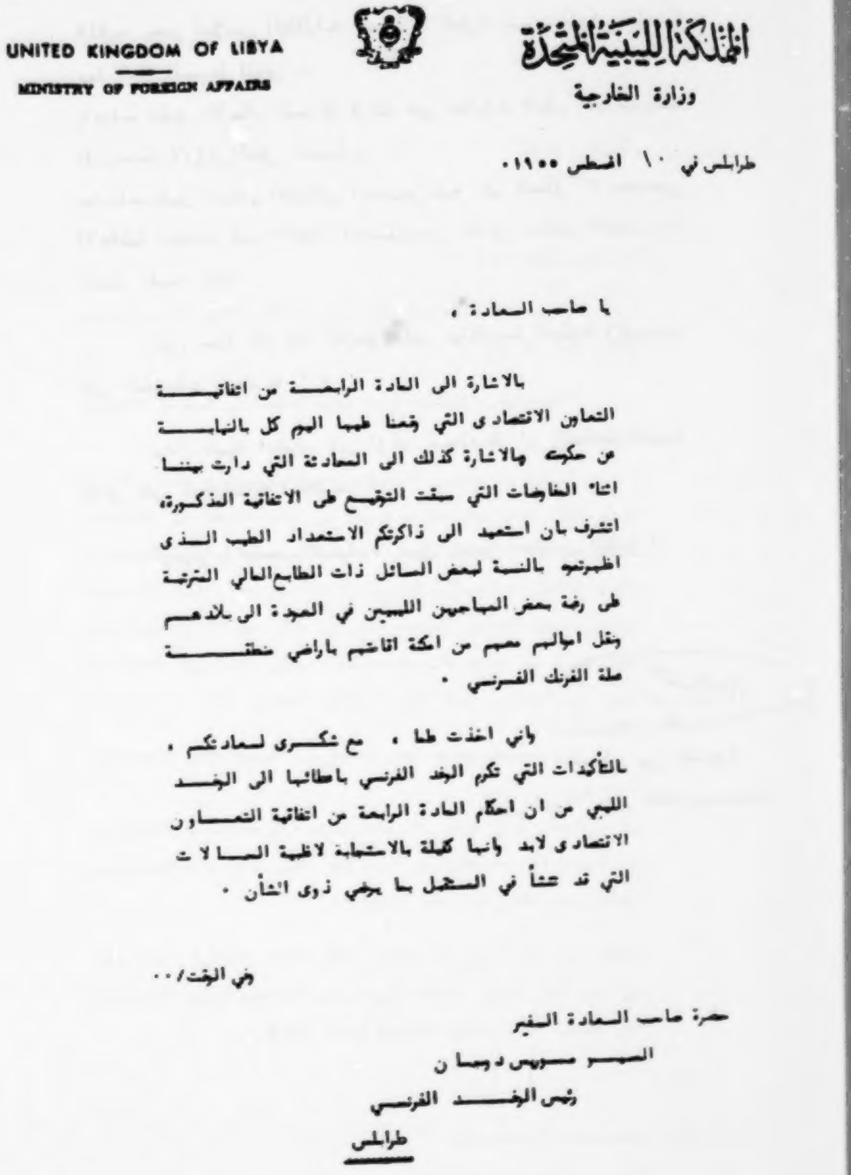
خامساً — يطبق النظام القضائي المنصوص عليه في الملحق ٣ من الاتفاقية الخاصة على الاعضاء العسكريين الذين تنقلهم الطائرات المشار اليها اعلاه .

اكون ممتنا لكم اذا تكرمتم بتأكيد موافقة الحكومة الليبية على المقترحات المتقدمة " .

ورداً عليها اتشرف بان اؤكد لسعادتكم ان الحكومة الليبية توافق على المقترحات المتقدمة .

ارجوكم يا صاحب السعادة تقبل شعور احترامي الفائق ؛

(مصطفى بن حليم)
رئيس الوزراء ووزير الخارجية



UNITED KINGDOM OF LIBYA
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المملكة الليبية المتحدة
وزارة الخارجية

طرابلس في ١٠ اغسطس ١٩٥٥.

يا صاحب السعادة ،

بالاشارة الى المادة الرابعة من اتفاقية التعاون الاقتصادى التي وقعنا عليها اليوم كل بالنيابة عن حكومته وبالاشارة كذلك الى المحادثة التي دارت بيننا اثناء المفاوضات التي سبقت التوقيع على الاتفاقية المذكورة، اتشرف بان استعيد الى ذاكرتكم الاستعداد الطيب الذى اظهرتموه بالنسبة لبعض المسائل ذات الطابع المالي المترتبة على رغبة بعض المهاجرين الليبيين في العودة الى بلادهم ونقل اموالهم معهم من امكنة اقامتهم باراضي منطقة عملة الفرنك الفرنسي .

واني اخذت علما ، مع شكرى لسعادتكم ، بالتأكيدات التي تكرم الوفد الفرنسي باعطائها الى الوفد الليبي من ان احكام المادة الرابعة من اتفاقية التعاون الاقتصادى لابد وانها كفيلة بالاستجابة لاغلبية الحالات التي قد تنشأ في المستقبل بما يرضي ذوى الشأن .

وفي الوقت/..

حضرة صاحب السعادة السفير
السيد موريس دوجيان
رئيس الوفد الفرنسي
طرابلس

وفي الوقت الذى آخذ فيه علما بهذه التأكيدات اود ان الفت نظر سعادتكم الكريم الى حالات اخرى قد تنشأ وقد لا تفي النظم العامة الفرنسية لمبادلة العملة بحلها حلا مرضيا تماما بسبب تجاوز مبلغ رؤوس الاموال المطلوب نقلها ، للقواعد المحددة في النظم العامة المذكورة ·

واني اكون ممتنا جدا لسعادتكم اذا تكرمتم بان تؤكدوا لي نية حكومتكم بان تتلقى بعين العطف الطلبات التي قد يقدمها الاشخاص ذوو الشأن والتي تشمل املاكا او اموالا في وضع قانوني تجاه التشريع الفرنسي ، لغرض الحصول على تصاريح التحويل في الاحوال التي تتعدى فيها المبالغ المطلوبة الحدود المنصوص عليها في النظام العام الفرنسي لمبادلة العملة ·

واني انتهز هذه الفرصة لاجدد لسعادتكم شعور احترامي الفائق ·

(مصطفى بن حليم)
رئيس الوزراء ووزير الخارجية

UNITED KINGDOM OF LIBYA
MINISTRY OF FOREIGN AFFAIRS

المملكة الليبية المتحدة
وزارة الخارجية

طرابلس في ١٠ اغسطس ١٩٥٥.

يا صاحب السعادة ،

اتشرف باحاطة سعادتكم علما بتسلم رسالتكم بتاريخ اليوم التي نصها كما يلي :

" اتشرف بافادتكم بان الحكومة الفرنسية ستتخذ بعد الجلاء التام للقوات الفرنسية عن فزان الاحكام الاتية فيما يخص المباني التي يشغلها الجنود والخدمات او الفنيون الفرنسيون وفيما يخص المواد المبينة في الكشفين المرفقين :

١) تحول ملكية المباني الايطالية سابقا وكذلك المباني التي شيدتها القوات الفرنسية — ماعدا مجموعة المباني المشار اليها بحرف " G " في الخريطة المرفقة — الى السلطات الليبية .

٢) وتصبح المباني التي شيدتها السلطات المدنية الفرنسية والملونة بالاصفر دون خطوط في الخريطة المرفقة — ما عدا المباني المشار اليها بحرف " H " — ملكا للسلطات الليبية . بيد ان الحكومة الليبية تتعهد بتخصيصها طيلة مدة المعاهدة لسكن الموظفين الليبيين ذوى الجنسية الفرنسية .

وتصبح /..

حضرة صاحب السعادة السفير
المسيو موريس دجان
رئيس وفد المفاوضات الفرنسي
طرابلس

٣) تخصص المباني المشار اليها بحرف " G " ملكا لليبيا . بيد ان الحكومة الليبية تؤجرها طيلة مدة المعاهدة للحكومة الفرنسية مقابل ايجار سنوي قدره جنيه ليبي واحد للاستفادة منها للاغراض المشار اليها في الفقرة ١ من تبادل الرسالتين الملحقتين بالاتفاقية الخاصة (الملحق ٣) .

٤) وتظل ملكا فرنسيا المباني المشار اليها بحرف " H " والتي يسكن فيها بين من يسكن القنصلية الفرنسية وموظفوها وتابعوها .

٥) وتظل المباني الفنية ومساكن الموظفين التابعين للخدمات الفنية للمطارات (الملاحة الجوية والارصاد الجوية) تحت تصرف هذه الخدمات بالشروط المحددة في الاتفاقية الخاصة . واشير الى هذه المباني والمساكن بحرف " I " في الخريطة .

٦) تظل الاسلحة والذخائر واجهزة اللاسلكي سواء كانت مؤجرة او معارة من قبل القوات الفرنسية الى بوليس فزان تحت تصرف البوليس نفسه . بيد انه اذا لم تعد هذه الاسلحة وهذه المواد في الخدمة العاملة كلها او جزئها مع بوليس فزان ، فيجب اعادتها الى السلطات الفرنسية . "

واني اتشرف بان اؤكد لسعادتكم بان الحكومة الليبية توافق على العرض الذى جاء في رسالتكم المذكورة .

وتفضلوا يا صاحب السعادة بقبول شعور احترامي الفائق ،

(مصطفى بن حليم)

رئيس الوزراء ووزير الخارجية

اتفاقية خاصة

المادة ١

تتعهد الحكومة الفرنسية بسحب قواتها العسكرية الموجودة حاليا بفزان . وينتهي الجلاء في مدة اثنى عشر شهرا بعد وضع المعاهدة موضع التنفيذ ، وفي اجل لايتجاوز الثلاثين نوفمبر ١٩٥٦ ، وتكون هذه القوات حتى نهاية هذا الاجل خاضعة للنظام الاتفاقي المحدد في الرسالتين المتبادلتين المرفقتين (الملحق ٢) . وتتمتع بنفس تسهيلات التموين والحركة كما في الماضي .

المادة ٢

تتعهد الحكومة الليبية من جانبها بان تؤمن ، بعد سفر القوات الفرنسية الموجودة الان بفزان ، احتلال هذه الاراضي بالقوات الليبية وحدها وتنفيذ كافة المهام ذات الطابع العسكري التي قد تقتضيها الظروف .

المادة ٣

تلقى الحكومة الليبية بعين الاعتبار في الحدود الممكنة في رسالة تفسيرية (الملحق ٣) الطلبات التي تقدمها اليها الحكومة الفرنسية بخصوص مرور القوافل العسكرية الفرنسية الذاهبة الى تشاد او العائدة منها على الطريق رقم ٥ · وتعين الرسالة التفسيرية ايضا تفصيلات الطريق المسماة برقم ٥ ، كما تعين النظام القضائي الذي يطبق على القوات الفرنسية اثناء مرورها ·

المادة ٤

تصرح الحكومة الليبية للحكومة الفرنسية باستخدام الطرق المستعملة حاليا لابدال الجنود وصيانة وتموين مركزي لوصان وجانت الفرنسيين ·

ويمنح هذا التصريح للمدة اللازمة لانشاء وسائل المواصلات الكافية في الناحية الاخرى من الحدود ، وفقا للرسالتين المتبادلتين المرفقتين (الملحق ٤) ·

المادة ٥

عند انتهاء الاجل المحدد لجلاء القوات الفرنسية عن فزان تسلم الحكومة الفرنسية للحكومة الليبية مطارات سبها وغات وغدامس والمنشآت الفنية الملحقة بها (المبانى والمعدات الخاصة باللاسلكى للملاحة الجوية والمعدات الخاصة بالارصاد الجوية ومساكن الموظفين) . وتصبح المنشآت ملكا للحكومة الليبية عند انتهاء هذه الاتفاقية ، بشرط ان تكون الحكومة الليبية قد تمكنت من الاحتفاظ فى هذه المطارات باطقم من الفنيين الفرنسيين فى الاحوال المبينة فى الرسالتين المرفقتين (الملحق ٥) .

ورغبة فى تسهيل المواصلات الجوية الفرنسية بين شمال واواسط افريقيا ونظرا لعدم توفر مطارات فرنسية فى هذه المنطقة فى وقت التوقيع على هذه الاتفاقية ، تمنح الحكومة الليبية ، بناء على اشعار سابق ، للطائرات العسكرية الفرنسية ، ابتداء من جلاء القوات الفرنسية عن فزان ، حق التحليق والهبوط الفنى فى مطار سبها لمدة خمس سنوات وفى مطارى غات وغدامس لمدة سنتين بالشروط والحدود المبينة فى الرسالتين المتبادلتين المرفقتين (الملحق ٦)

وبعد انقضاء مدة السنوات الخمس المذكورة ، تنظر الحكومة الليبية بعين الاعتبار فى الطلبات التى تقدمها الحكومة الفرنسية لتحليق الطائرات العسكرية الفرنسية وهبوطها الفنى بمطار سبها .

المـــــــادة ١

تبرم هذه الاتفاقية فى نفس الوقت الذى تبرم فيه المعاهدة التى الحقت بها هذه الاتفاقية وتوضع موضع التنفيذ بتاريخ تبادل وثائق الابرام ويجوز اعادة النظر فيها وانهاؤها بنفس الطرق المنصوص عليها فى المعاهدة ذاتها .

حرر بطرابلس فى العاشر اغسطس ١٩٥٥ فى صورتين اصليتين باللغتين الفرنسية والعربية وكلا النصين متساو فى صحته .

من حكومة المملكة الليبية المتحدة

من حكومة الجمهورية الفرنسية

اتفاقية حسن جوار

ان الحكومة الفرنسية والحكومة الليبية رغبة منهما في تنظيم علاقات الجوار بينهما وفقا للمادة ١ من معاهدة الصداقة وحسن الجوار قد اتفقتا على ما يلي :-

الفصل ا.لاول الامن على الحدود

المادة ١

تتخذ الحكومة الفرنسية والحكومة الليبية التدابير لتأمين حفظ النظام والامن على الحدود التي عرفت في المادة الثالثة من معاهدة الصداقة وحسن الجوار والتي تفصل بين المملكة الليبية المتحدة وبين الاراضي التي تتولى فرنسا الدفاع عنها كما حددت في المادة الثامنة من المعاهدة المذكورة ٠ وذلك عن طريق الاتصال والتعاون بين خدمات البوليس التابعة لكل منهما ٠

ومن المفهوم ان الاحكام المبينة اعلاه لاتمس حق اللجوء السياسي كما يمارس وفقا للعرف الدولي ٠

الفصل الثانى ترحل البدو

المادة ٢

تتعهد الحكومة الفرنسية والحكومة الليبية بمنح تسهيلات لترحل بدو القبائل التى تتنقل تقليديا من جهة الى اخرى عبر الحدود الفاصلة بين ليبيا وبين الجزائر .

المادة ٣

ولهذه الغاية تخصص منطقة كائنة على الجانبين من هذه الحدود لجميع الرحل المشار اليهم فى المادة ٤ ادناه ممن يحملون تصريح الترحل .

وتحدد هذه المنطقة بـ :

فى الاراضى الفرنسية بخط يبدأ غرب غدامس بوادى تين فوشاى ويمر بتلالطين واوهانت وحاسى تاكويت وحاسى او منجل وتين هنكا وادرار عهاوه وورارى الزان حتى يتصل بمرتفع ١٠١٠ بمنارة ذروة الجمل .

وفى الاراضى الليبية بخط يبدأ بمنارة تالسوت ويمر بدرج وترغسوت الكرمة وجهنة وشنين وطعسر سهيل وحسى الفرطاس وسارن وتين طوهين وحسى مهيس واهارى وتانس الخضود حتى بر واناى .

المــــادة ٤

تصدر السلطات الادارية التالية تصاريح الترحل الى الرحل التابعين لها بناء على طلبهم ·

الاراضي الفرنسية :. السلطات الادارية بفور فلاترس وفور بولينك وجانت ·

الاراضي الليبية : السلطات الادارية بغدامس وغات والتوارق الاوراغن ·

المــــادة ٥

تكون تصاريح الترحل صالحة لمدة اقصاها تسعة اشهر ،كما تكون على اساس العائلة ويجب ان تحتوى على البيانات التالية باللغتين ألفرنسية والعربية :ـ

- اسم رئيس العائلة ....
- القبيلة .... قسم القبيلة ...
- اسماء افراد العائلة ....
- عدد الحيوانات ....
- المنطقة المقصودة ....
- مدة الصلاحية ....
- تاريخ منح التصريح ....
- توقيع السلطة التى تصدر التصريح وختمها ....

المادة ٦

يجوز للرحل الذين بيدهم تصريح ترحل ان يجتازوا الحدود بحرية وان يتجولوا في المنطقة التي يحددها والمبينة في التصريح المعين في المادة ٥ ، بحكم طلبهم للمرعى ·

يجوز لهم التجول مع حيواناتهم في حدود تلك المنطقة دون دفع اية رسوم جمركية على حيواناتهم وعلى ما هو شخصي من امتعتهم ولوازمهم ويعفون كذلك من رسوم المرعى والورود ومن كافة الرسوم الاخرى الخاصة بالدخول في الاراضي والخروج منها ·

المادة ٧

يجب على كل شخص من الرحل الذين بيده تصريح ترحل ان يحصل على تأشيرة على تصريحه من السلطات الادارية في الناحية التي يقصدها ·

المادة ٨

ويجوز منح تسهيلات مماثلة للترحل بين جانبي الحدود الفاصلة بين القطر التونسي وليبيا اذا ما تطلبت الظروف ذلك ·

الفصل الثالث تجارة القوافل والتجول عبر الحدود

المادة ٩

تتعهد الحكومة الفرنسية والحكومة الليبية بمنح تسهيلات التجول للرحل من القبائل التي تتعاطى تقليديا التجارة بين جانبي الحدود الفاصلة بين اراضي الجزائر وافريقيا الغربية الفرنسية وافريقيا الاستوائية الفرنسية من ناحية وبين ليبيا من ناحية اخرى للاحتفاظ بتجارة القوافل التقليدية القائمة بين نطاق التيبستي والاندى وبركو وبلما وآجرس من جهة ومناطق الكفرة ومرزوق واوباري وغات وادري وغدامس من جهة اخرى ·

المادة ١٠

ولهذه الغاية تخصص منطقة على جانبي الحدود لتجارة القوافل التي يتعاطاها الرحل المشار اليهم في المادة ١١ ادناه والذين يحملون تصاريح تجول من اجل تجارة القوافل ·

وتحدد هذه المنطقة :ـ

في الاراضي الفرنسية خط يبدأ من الحدود غرب غدامس ويمر بتنقوشاي وتيطلولين وجانت
وزوار ولارجو وفايا
وتوموليناك وبو قاردل ~~بلاها~~ وبلما ويمتد في اتجاه مستقيم حتى الحدود الفرنسية السودانية ·

في الاراضي الليبية خط يبدأ بسيناون ويمر بدرج وادري والابيض وغدوة وزويلا وواو الناموس والكفرة ويمتد في اتجاه مستقيم حتى الحدود الليبية المصرية ·

المادة ١١

تصدر السلطات الادارية التالية للرحل والتابعين لها بناء على طلبهم تصاريح التجول لتجارة القوافل :ـ

الاراضي الفرنسية :ـ السلطات الادارية لفور فلاترس فور بولنياك وجانت وبلما فزار ولارجو وفادا ·

الاراضي الليبية :ـ السلطات الادارية بغدامس وغات ، ومرزق ، والكفرة ، والتوارق والاوراقن ·

المادة ١٢

تكون هذه التصاريح صالحة لمدة اقصاها خمسة اشهر ، وتكون فردية ويجب ان تحمل البيانات الاتية باللغتين الفرنسية والعربية :ـ

- اسم حامل التصريح ....
- القبيلة ...... قسم القبيلة ......
- المهنة ....
- المكان المقصود ....
- اسلوب التجول ....
- السلع المصدرة ....
- مدة الصلاحية ....
- تاريخ منح التصريح ....
- توقيع السلطة التي اصدرت التصريح وختمها ....

المادة ١٣

يجوز للرحل الذين بيدهم تصريح للتجول لتجارة القوافل ان يجتازوا الحدود بصحبة قطعانهم ولهم ان ينقلوا البضائع معفاة من اية رسوم جمركية او اية عوائد على دخول البضائع او تنقلها في الاراضي المعنية ·

في اتجاه ليبيا : المواشي ، السمن الحنة ، الجلود ، المنتجات اليدوية ، واللحم والمجفف ·

في اتجاه الاراضي الفرنسية : الحبوب ، التمور ، المنسوجات اليدوية ، والطماطم المجففة .

وتكون كافة البضائع الاخرى خاضعة للرسوم الجمركية الا انها تعفى من تصريح التوريد والتصدير طيلة وجودها داخل منطقة الحدود .

المادة ١٤

يجب على كل شخص من الرحل الذي بيده تصريح تجول لتجارة القوافل ان يحصل على تاشيرة على تصريحه من السلطات الادارية في الناحية التي يقصدها وكذلك من السلطات الادارية التي قد تقع في طريقه .

المادة ١٥

تتعهد الحكومة الفرنسية والحكومة الليبية بمنح تسهيلات المرور من جانبي الحدود الفاصلة بين الجزائر من جهة وليبيا من جهة اخرى للاشخاص الساكنين داخل منطقة الحدود المبينة في المادة ١٠ من هذه الاتفاقية والذين لهم املاك غير منقولة في الناحية الاخرى من الحدود في منطقة الحدود هذه .

ويكون الامر كذلك بخصوص الاشخاص الساكنين بالذهيبات والذين لهم املاك غير منقولة في منطقة وازن . وبخصوص سكان وازن الذين لهم املاك غير منقولة في منطقة الذهيبات .

المادة ١٦

تمنح كافة التسهيلات لهؤلاء الاشخاص حتى يتمكنوا من اجتياز الحدود ونقل منتجات املاكهم معفاة من الرسوم الجمركية او اية عوائد اخرى .

المادة ١٧

وتمنح كذلك سلطات الحدود الفرنسية والليبية تسهيلات مرور لعمال الزراعة الذين يمارسون نشاطهم في الاعمال الزراعية في الناحية الاخرى من الحدود .

ويجوز لهؤلاء العمال أن ينقلوا بحرية البضائع التي تكون قد دفعت لهم مقابل عملهم .

المادة ١٨ .

يزود الاشخاص المنصوص عليهم في المادتين ١٥ و ١٧ بتصاريح تجول للحدود تصدرها السلطات الادارية في الجهة التي يقدمون منها ويجب ان تؤشر عليها سلطات الحدود في البلاد التي يقصدونها وتكون هذه التصاريح على اساس العائلة وتحمل البيانات التالية :-

ـ اسم حامل التصريح ....
ـ القبيلة ....قسم القبيلة ....
ـ المكان المقصود ....
ـ مدة الصلاحية ....
ـ اسماء الاشخاص المرافقين لحامل التصريح ....
ـ تاريخ منح التصريح ....
ـ توقيع السلطة التي اصدرت التصريح وختمها ....

المادة ١٩

يجب على الاشخاص الذين يحملون تصاريح ترحال او تجارة قوافل او تجول حدود ان يخضعوا للقوانين والاوامر النافذة في البلاد التي يكونون فيها وخصوصا القوانين والاوامر المتعلقة بالامن والسلامة العامة .

المادة ٢٠

تتخذ سلطات الحدود الفرنسية والليبية كافة التدابير الكفيلة بتجنب سرقة الحيوانات ومكافحة النهب وتعقب المجرمين .

المادة ٢١

ترفع الخلافات التي قد تنشأ عن تطبيق هذه الاتفاقية الى لجان تحكيم تجتمع في مواعيد تحدد باتفاق الطرفين في منطقة الحدود الفرنسية او التونسية وفي منطقة الحدود الليبية بالتناوب . وتتألف هذه اللجان من عدد متساو من الممثلين عن المنطقتين . وتكون قراراتها نافذة اذا لم تعترض عليها السلطات الادارية التابعة لاحد الطرفين في مدة ثلاثين يوما .

المادة ٢٢

تبرم هذه الاتفاقية في نفس الوقت الذى تبرم فيه المعاهدة التي الحقت بها هذه الاتفاقية وتخضع مثلها للتصديق بتاريخ تبادل وثائق الابرام ويجوز اعادة النظر فيها وانهاؤها بنفس الطرق المنصوص عليها في المعاهدة ذاتها .

حرر بطرابلس في العاشر من اغسطس ١٩٥٥ في صورتين اصليتين باللغتين الفرنسية والعربية وكلا النصين متساو في صحته .

عن حكومة المملكة الليبية المتحدة

عن حكومة الجمهورية الفرنسية

اتفاقية تعاون اقتصادى

ان الحكومة الفرنسية والحكومة الليبية قد حفزتهما الرغبة فى توثيق الروابط الاقتصادية والتجارية بين البلدين ، وفقا للمادة السادسة من معاهدة الصداقة وحسن الجوار ، قد اتفقتا على ما يلى : —

المادة ١

يتعهد الفريقان الساميان المتعاقدان بان يبحثا سويا ـ فى نطاق تشريعاتهما الداخلية ـ التدابير التى يجوز لهما اتخاذها لغرض تنمية التبادل التجارى بين البلدين ·

ولهذه الغاية يجوز لهما عقد جميع الاتفاقات والاتفاقيات التى تبدو لهما لازمة · ويجوز لهما بصفة خاصة اجراء مفاوضات بغرض عقد معاهدة تجارة واقامة ، واتفاق تجارى اذا تطلب ذلك تطور المبادلات بينهما ·

المادة ٢

ويتعهد الفريقان الساميان المتعاقدان منذ الان بعدم معاملة البضائع المنتجة فى كل منهما معاملة تمييزية فيما يخص الرسوم الجمركية والضرائب غير المباشرة ونظام

مبادلة العملة بصفة عامة فيما يخص التدابير التي لها صلة بالتجارة الخارجية ، وذلك بالنسبة لما تشترطه تشريعاتهما الداخلية فيما يخص البضائع المماثلة المنتجة اصلا في البلاد الاجنبية الاخرى مع مراعاة بصفة خاصة الاحكام المتعلقة بالالتزامات الناتجة بالنسبة لكل من الطرفين من انضمامه لاتفاقات اقتصادية اقليمية وخاصة بالنسبة لفرنسا المنظمة الاوربية للفحم والفولاذ وبالنسبة لليبيا الجامعة العربية

المادة ٣

وطبق نفس التعهد عدم التميز على المؤسسات الصناعية والزراعية والتجارية التابعة لكل من الفريقين السامين المتعاقدين .

وعلى ذلك فان المؤسسات الصناعية والتجارية والزراعية لاحد الفريقين الساميين المتعاقدين التي تمارس نشاطها في ارض الفريق الاخر لا يجوز معاملتها معاملة تختلف عن تلك التي تعامل بها المؤسسات المماثلة التابعة للبلاد الاخرى .

وطبقا لهذا التعهد ايضا تقبل المؤسسات الصناعية والزراعية والتجارية التابعة لاحد الفريقين الساميين المتعاقدين في المناقصات والمزايدات التي يقوم بها الفريق السامي المتعاقد الاخر بنفس الشروط التي تقبل بمقتضاها المؤسسات التابعة للبلاد الاجنبية الاخرى .

المادة ٤

اما فيما يخص نقل رؤوس الاموال بين منطقة الفرنك الفرنسى وليبيا فيتعهد الفريقان الساميان المتعاقدان بالسماح بها بالشروط المبينة فى النظم العامة المتعلقة بمبادلة العملة التابعة لكل منهما .

المادة ٥

تقبل فى الاراضى الليبية معفاة من الرسوم الجمركية البضائع الواردة من منطقة الفرنك والصادر اليها عبر ليبيا بالشروط المحددة فى القوانين الليبية الخاصة بالترنسيت . وتضمن فائدة هذه الاجراءات على سبيل التبادل للبضائع التى ترد من ليبيا او تصدر اليها عبر منطقة عملة الفرنك الفرنسى

المادة ٦

تقوم الحكومة الفرنسية ببذل تعاونها الاقتصادى/الفني لليبيا توخيا لمساعدتها فى تنمية مواردها الصناعية والزراعية وزيادة امكانياتها فى التبادل .

المادة ٧

تضع الحكومة الفرنسية تحت تصرف الحكومة الليبية بناء على طلبها ما قد تحتاج اليه من فنيين فى جميع فروع التخصص.

وتعامل الحكومة الليبية هؤلاء الفنيين بشروط لا تقل ملائمة عن الشروط التى تعامل بها غيرهم من الفنيين الاجانب من اية جنسية اخرى.

المادة ٨

تساعد الحكومة الفرنسية الشركات الفرنسية على دراسة وتنفيذ مشاريع التجهيز الصناعى والزراعى التى يعهد اليها بها فى ليبيا ويجوز لها ان تسهل من طريق القرض ومع مراعاة قواعد نظم الدولة للقروض والتأمين ، تمويل تجهيز المعدات الصناعية التى تتطلبها مشاريع التجهيز هذه .

المادة ٩

يجوز للحكومة الفرنسية بالاتفاق مع الحكومة الليبية ان تساهم هى نفسها فى حدود الاعتمادات التى يخصصها برلمان الجمهورية الفرنسية فى تمويل الاعمال ذات الفائدة الاقتصادية او الفنية وفى رؤوس اموال المؤسسات التى تهدف لتحقيق مثل هذه الاعمال ·

المادة ١٠

يكون مجموع المسائل المذكورة فى هذه الاتفاقية موضع تشاور بين الحكومتين كلما رأتا ذلك ضروريا ·

المادة ١١

تبرم هذه الاتفاقية فى نفس الوقت الذى تبرم فيه المعاهدة التى ارتبطت بها هذه الاتفاقية وتوضع موضع التنفيذ بتاريخ تبادل وثائق الابرام ويجوز اعادة النظر فيها وانهاؤها بنفس الطرق المنصوص عليها فى المعاهدة

حرر بطرابلس فى ١٠ اغسطس ١٩٥٥ فى صورتين اصليتين باللغتين الفرنسية والعربية وكلا النصين متساو فى صحته .

من حكومة المملكة الليبية المتحدة

من حكومة الجمهورية الفرنسية

اتفاقية ثقافية

ان الحكومة الفرنسية والحكومة الليبية ، قد حدتهما نفس الرغبة في حفظ وتنمية العلاقات الطيبة القائمة بين البلدين في ميدان التعليم والبحث العلمي ، ورغبة في تطبيق المادة السادسة من معاهدة الصداقة وحسن الجوار على اساس المعاملة بالمثل ، قد اتفقتا على ما يلي :

المادة ١

تقوم الحكومتان الفرنسية والليبية ، في نطاق التشريعات الخاصة بكل منهما ، بتسهيل تبادل الوسائل الثقافية بين البلدين وخصوصا الكتب والافلام والادوات العلمية .

المادة ٢

تشجع الحكومة الليبية في نطاق مناهجها الدراسية تعليم اللغة الفرنسية في مؤسسات التعليم الليبية ·

ولهذه الغاية يجوز للحكومة الليبية ان تطلب الى الحكومة الفرنسية ايجاد المدرسين المؤهلين وتقدم لهؤلاء التسهيلات الضرورية لان يقوموا باعمالهم ·

ويجوز اتخاذ ترتيبات خاصة في هذا الصدد بالاتفاق بين الحكومتين ·

المادة ٣

تقدم الحكومة الفرنسية منحا سنوية لعدد من الطلبة الليبيين الراغبين في متابعة او استكمال دراستهم في مؤسسات التعليم او البحث العلمي ·

وتتخذ ترتيبات خاصة لهذا الغرض بالاتفاق بين الحكومتين ·

المادة ٤

تساعد الحكومة الفرنسية والحكومة الليبية على اساس التبادل الابحاث ذات الطابع العلمي التي تهم البلدين ٠

المادة ٥

تتبادل الحكومتان منها المعلومات المتعلقة بتطبيق النصوص الواردة في المواد السابقة وتتفقان على التدابير التي من شأنها تنمية العلاقات الثقافية بين البلدين ٠

المادة ٦

تبرم هذه الاتفاقية في نفس الوقت الذى تبرم فيه المعاهدة التى الحقت بها هذه الاتفاقية

وتوضع موضع التنفيذ بتاريخ تبادل وثائق الابرام
ويجوز اعادة النظر فيها وانهاؤها بنفس الطرق
المنصوص عليها في المعاهدة ذاتها .

حرر بطرابلس في ١٠ اغسطس ١٩٥٥ في
صورتين اصليتين باللغتين الفرنسية والعربية
وكلا النصين متساو في صحته .

من حكومة المملكة الليبية المتحدة   من حكومة الجمهورية الفرنسية

Annex 29

FRANCE AND LIBYA — EXCHANGE OF LETTERS (WITH ANNEXES) CONSTITUTING AN AGREEMENT TO DELIMIT THE FRANCO-LIBYAN FRONTIER. TRIPOLI, 26 DECEMBER 1956

United Nations: *Treaty Series*, No. 4340, 1958,
pp. 264-295.

No. 4340

FRANCE
and
LIBYA

Exchange of letters (with annexes) constituting an agreement to delimit the Franco-Libyan frontier. Tripoli, 26 December 1956

Official texts: French and Arabic.

Registered by France on 19 May 1958.

FRANCE
et
LIBYE

Échange de lettres (avec annexes) constituant un accord de délimitation de la frontière franco-libyenne. Tripoli, 26 décembre 1956

Textes officiels français et arabe.

Enregistré par la France le 19 mai 1958.

Nº 4340. ÉCHANGE DE LETTRES CONSTITUANT UN ACCORD[1] DE DÉLIMITATION DE LA FRONTIÈRE FRANCO-LIBYENNE ENTRE LE GOUVERNEMENT FRANÇAIS ET LE GOUVERNEMENT LIBYEN. TRIPOLI, 26 DÉCEMBRE 1956

I

LÉGATION DE FRANCE EN LIBYE

Tripoli d'Afrique, le 26 Décembre 1956

Excellence,

Nos deux Gouvernements ayant décidé de procéder à la délimitation de la frontière algéro-libyenne entre Ghat et Ghadamès, telle qu'elle a été indiquée par l'arrangement franco-italien du 19 Septembre 1919[2], une Commission Mixte s'est réunie à cette fin à Tripoli sous la présidence du côté libyen, de Son Excellence, Monsieur Ali Sahli, Ministre des Affaires Étrangères, et du côté français de Monsieur Georges Balaij, Ambassadeur.

Les travaux de cette Commission ont abouti le 19 Décembre 1956, à des conclusions qui, en portant délimitation de ladite frontière, ont été résumées dans les documents suivants signés ou paraphés par les Présidents de chaque Délégation :

A) Préambule[3],
B) Définition du tracé entre Ghadamès (Garet El Hamel) et Ghat (parallèle de la Grande Mosquée)[4] avec cartes annexes[5],
C) Lettres au sujet de l'aérodrome d'Edjele[6],
D) Lettres au sujet de la route de Tarat à Tin Alkoum[7].

En portant à la connaissance de Votre Excellence que j'ai reçu pleins pouvoirs pour confirmer l'accord du Gouvernement Français sur les dites conclusions, je lui serais reconnaissant de me donner acte de l'accord du Gouvernement Libyen à leur sujet.

Veuillez agréer, Monsieur le Ministre, les assurances de ma très haute considération.

(*Signé*) Jacques DUMARCAY

Son Excellence Monsieur le Ministre des Affaires Étrangères
Tripoli

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[1] Entré en vigueur le 26 décembre 1956 par l'échange desdites lettres.
[2] *British and Foreign State Papers*, vol. 118, p. 315.
[3] Voir p. 268 de ce volume.
[4] Voir p. 270 de ce volume.
[5] Voir hors-texte dans une pochette à la fin de ce volume.
[6] Voir p. 278 de ce volume.
[7] Voir p. 282 de ce volume.

II

[ARABIC TEXT — TEXTE ARABE]

المملكة الليبية المتحدة
وزارة الخارجية

طرابلس فى ٢٦ ديسمبر ١٩٥٦

ياصاحب السعادة ،

لقد استلمت بتاريخ اليوم الرسالة الآتى نصها الموجهة الينا باسم حكومتكم :

« لما قررت حكومتانا البدء فى تحديد وتبيان الحدود الجزائرية الليبية بين غات وغدامس حسبما ذكرت فى التسوية الفرنسية — الايطالية التى وقعت فى ١٩ سبتمبر ١٩١٩ قد اجتمعت لهذا الغرض ، فى مدينة طرابلس ، لجنة مشتركة يرأسها من الجانب الليبى صاحب السعادة علي الساحلي وزير الخارجية ومن الجانب الفرنسي صاحب السعادة السفير المسيو بلاى .

ان اعمال هذه اللجنة قد ادت بتاريخ ١٩ ديسمبر ١٩٥٦ الى نتائج تحدد وتبين الحدود المذكورة وقد ضمنت الوثائق الآتية التى وقعها أو اشر عليها بالحروف الاولى رئيسا كل من الوفدين :

أ) المقدمة
ب) تحديد الخط ما بين غدامس (قارة الهامل) وغات (موازى الجامع الكبير) والخرط الملحقة .
جـ) رسائل تتعلق بموضوع مطار أجيلة .
د) رسائل تتعلق بموضوع الطريق المؤدى بين تارات الى تين الكوم .

وبينما انقل الى سعادتكم حصولى على التفويض الكامل لتأكيد موافقة الحكومة الفرنسية على تلك النتائج اكون شاكرا لو تكرمتم بابلاغى موافقة الحكومة الليبية عليها .

وتفضلوا ياصاحب السعادة تاكيد عظيم تقديرى واحترامى »

وأتشرف بابلاغكم موافقة الحكومة الليبية على هذه المقترحات .

وتفضلوا ياصاحب السعادة بقبول اسمى عبارات التقدير ...

علي الساحلي

صاحب السعادة مسيو جاك دومارسي
الوزير المفوض والمندوب فوق العادة للجمهورية الفرنسية
طرابلس

[TRADUCTION[1] — TRANSLATION[2]]

ROYAUME-UNI DE LIBYE
MINISTÈRE DES AFFAIRES ÉTRANGÈRES

Tripoli d'Afrique, le 26 Décembre 1956

Excellence,

J'ai reçu à la date de ce jour la lettre que d'ordre de Votre Gouvernement vous m'avez adressée et dont la teneur suit :

[*Voir lettre I*]

J'ai l'honneur de vous donner acte de l'accord du Gouvernement Libyen sur lesdites propositions.

Veuillez agréer, Monsieur le Ministre, les assurances de ma très haute considération.

(*Signé*) Ali SAHLI

Son Excellence Monsieur Jacques Dumarcay
Ministre Plénipotentiaire et Envoyé Extraordinaire
de la République Française
Tripoli

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[1] Traduction du Gouvernement français.
[2] Translation by the Government of France.

DOCUMENT A

LÉGATION DE FRANCE EN LIBYE

Tripoli d'Afrique, le 19 Décembre 1956

DÉLIMITATION DE LA FRONTIÈRE ALGÉRO-LIBYENNE ENTRE GHAT ET GHADAMÈS

Le Gouvernement Français et le Gouvernement Libyen ayant décidé d'un commun accord de procéder à la délimitation de la frontière algéro-libyenne entre Ghat et Ghadamès, telle qu'elle a été indiquée par l'arrangement franco-italien du 12 Septembre 1919, ont chargé de cette opération une Commission Mixte, laquelle a tenu ses réunions à Tripoli.

La Commission Mixte résume dans les documents ci-joints les conclusions auxquelles ont abouti ses travaux et qui portent délimitation de ladite frontière :

1° — Définition du tracé entre Ghadamès (Garet El Hamel) et Ghat (parallèle de la Grande Mosquée) et cartes.
2° — Lettres au sujet de l'aérodrome d'Edjele.
3° — Lettres au sujet de la route de Tarat à Tin Alkoum.

Le Président de la Délégation Française : G. Balaÿ	Le Président de la Délégation Libyenne : Ali Sahli

[**Arabic text — Texte arabe**]

المفوضية الفرنسية
بليبيا

طرابلس في ١٩ ديسمبر ١٩٥٦

تعيين الحدود الجزائرية الليبية
بين غات وغدامس

بما أن الحكومة الفرنسية والحكومة الليبية قد قررتا باتفاق فيما بينهما القيام بتحديد الحدود الجزائرية الليبية بين غات وغدامس كما هي مبينة في الاتفاقية الفرنسية الايطالية في ١٢ سبتمبر ١٩١٩ ، فقد عهدتا بالقيام بهذه العملية الى لجنة مشتركة عقدت اجتماعاتها في طرابلس .

وتلخص اللجنة المشتركة في الوثائق المرفقة طيه النتائج التى وصلت اليها في اعمالها التي تعين الحدود المذكورة .

١ ـ . تعيين الخط بين غدامس (غارة الحامل) وغات (خط عرض الجامع الكبير) والخرط .

٢ ـ . رسائل تتعلق بمطار أجيلة .

٣ ـ . رسائل بخصوص الطريق من تارات الى تين الكوم .

رئيس الوفد الليبي
علي الساحلي

رئيس الوفد الفرنسى
G. Balaÿ

DOCUMENT B

Tripoli d'Afrique, le 19 Décembre 1956

DÉFINITION DU TRACÉ DE LA FRONTIÈRE ENTRE GHADAMÈS (GARET HAMEL) ET GHAT (PARALLÈLE DE LA GRANDE MOSQUÉE)

Les documents suivants ont été choisis par la Commission Mixte pour situer les points indispensables à la détermination de la frontière :

A) Des cartes provisoires de la zone frontière algéro-libyenne entre les parallèles 26°30 et 30°10 de latitude Nord, en trois feuilles[1] à l'échelle moyenne du 1/200.000, établies en 1956 par l'Institut Géographique National Français, d'après une interprétation topographique des photographies aériennes prises par l'Institut Géographique National Français, en 1953, 1954, 1956. Ces photographies à l'échelle moyenne de 1/50.000, ont été assemblées pour former des photoplans qui ont été réduits à l'échelle moyenne de 1/100.000.

B) Des cartes de l'Afrique au 1/500.000 (type spécial pour les régions sahariennes), en deux feuilles[1] publiées par le Service Géographique de l'Armée Française, l'une : Fort Tarat en 1936, l'autre : Fort Charlet en 1936, complétée en 1943.

La méthode adoptée pour déterminer la frontière sans ambiguïté a été de se reporter aux cartes provisoires de la zone frontière algéro-libyenne pour y désigner les points et les lignes de référence de Garet Hamel jusqu'à la région d'Habertene.

À partir de cette région jusqu'à Ghat ces points et ces lignes ont été désignées sur les cartes au 1/500.000.

I) SECTION NORD

(Cartes provisoires de la zone frontière algéro-libyenne)

Le point initial est la borne située sur Garet Hamel, à environ 14 km Sud Ouest de Ghadamès et désignée par le n° 233 dans le procès-verbal d'abornement de la frontière franco-turque en 1911 (voir copie ci-jointe[2]).

Le point A, situé à la pointe Sud d'un escarpement, est relié au point initial par une ligne droite.

Le point B, situé au centre d'un petit escarpement, est relié au point A par une ligne droite.

Le point C, situé au Nord de la *Daia* la plus au Sud d'un groupe de quatre, est relié au point B par une ligne droite.

Le point D, situé sur un affleurement est relié au point C, par une ligne droite.

Le point E, point astronomique appelé Ouan Taredjeli sur la carte provisoire de la zone frontière algéro-libyenne est relié au point D par une ligne droite.

Le point F, situé sur la pointe Nord Est d'un escarpement, est relié au point E par une ligne droite.

Du point F au point G, la frontière suit à 1 km à l'Ouest le tracé représentant la piste passant à l'Est d'Edjele.

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[1] Voir hors-texte dans une pochette à la fin de ce volume.

[2] Voir p. 275 de ce volume.

Le point G est situé sur la bordure Sud de la piste d'aviation, à 1 km à l'Ouest du tracé représentant la piste passant à l'Est d'Edjele.

Du point G au point H, la frontière suit à 1 km à l'Ouest le tracé représentant la piste passant à l'Est d'Edjele.

À partir du point H qui est situé sur la ligne de thalweg indiquée sur la carte, la distance entre le dit tracé et la frontière se réduit à 0 km 900 jusqu'à un point H_1 situé à 0 km 200 du point H.

Du point H_1 au point I, la frontière suit à 0 km 900 à l'Ouest le tracé représentant la piste passant à l'Est d'Edjele.

Le point I est situé à 0 km 900 du tracé représentant la piste passant à l'Est d'Edjele au point ou celui-ci prend une direction Sud.

À partir du point I, la frontière suit une ligne qui arrive à 1 km au Nord de Hassi El Mislane, fait le tour du *hassi* et, à partir du point situé à 1 km au Sud du *hassi*, suit le parallèle de ce point jusqu'au point J.

Le point J est défini comme étant à 1 km à l'Ouest de l'intersection dudit parallèle et du tracé représentant la piste passant à l'Est d'Edjele.

De J à K, la frontière suit à 1 km à l'Ouest le tracé représentant la piste passant à l'Est d'Edjele.

Le point K est situé à 1 km à l'Ouest de L.

Le point L, embranchement des deux pistes, l'une passant par Tin Haliouine, l'autre par Tilmas est relié au point K par une ligne droite.

À partir du point L, la frontière suit le tracé représentant la piste passant par Tilmas, cette piste étant en territoire libyen. Ce tracé rejoint le point M qui est l'intersection de la précédente piste et d'une ligne de thalweg.

Le point N, situé sur un affleurement est relié au point M par une ligne droite.

Le point O, est relié au point N par une ligne droite.

Le point P, point astronomique de Tan Emezadj est relié au point O par une ligne droite.

II) Section Sud

(Carte d'Afrique au 1/500.000, type spécial pour les régions sahariennes)

Le point Q, intersection de la ligne joignant le point astronomique précédent au puits comblé d'Aoussedjine et de la piste de Tan Kena à Fort Tarat, est relié au point P par une ligne droite.

À partir de ce point, la frontière suit la piste de Tan Kena à Fort Tarat jusqu'au point R, cette piste étant en territoire français.

Le point R est situé à l'endroit où la piste précédente passe à la pointe Sud d'un escarpement.

Le point S, situé sur l'escarpement qui est immédiatement au Sud de l'Ain El Kebir, est relié au point R par une ligne droite.

Le point T, intersection de la ligne reliant le point S au point astronomique de Tin Khiamine et du parallèle de la Grande Mosquée de Ghat est relié au point S par une ligne droite.

Le Président de la Délégation Française : G. Balaÿ	Le Président de la Délégation Libyenne : Ali Sahli

ابتّداء من هذه النقطة فان الحدود تتبــع الطريق الممتد من تان كينا الى فورت تارات الى أن تصل الى النقطة (ص) ، و تقع هذه الطريق في أراضي فرنسية .

و تقع النقطة (ص) في المكان الذى تمر فيه الطريق المذكورة بالحافة الجنوبية لجرف .

النقطة (ق) الواقعة على الجرف الموجود جنوب العين الكبيرة مباشرة ترتبط بالنقطة (ص) على خط مستقيم .

النقطة (ر) ، التي هي تقاطع الخط الذى يربط بين النقطة (ق) والنقطة الفلكية لتين كيامين وخط العرض المار بجامع غات الكبير ، ترتبط بالنقطة (ق) على خط مستقيم .

علي الساحلي

G. Balaÿ

بـ « وان ترجيلي » ، ترتبط بالنقطة (د) على خط مستقيم .

النقطة (و) ، الواقعة على الجهة الشمالية الشرقية لهضبة ، ترتبط بالنقطة (هـ) على خط مستقيم .

ومن النقطة (و) الى النقطة (ز) ، فان الحدود تتبع غربا خط الطريق (Piste) التى تمر شرق أجيلة على بعد كيلو متر واحد .

والنقطة (ز) تقع على الحافة الجنوبية من مهبط الطيران على بعد كيلو متر واحد غربي خط الطريق التي تمر شرق أجيلة .

ومن النقطة (ز) الى النقطة (ح) فان الحدود تتبع على بعد كيلو متر واحد غربا خط الطريق المار شرقي أجيلة .

وابتداء من النقطة (ح) التي تقع على خط قاع الوادى (Thalweg) المبين على الخريطة ، فان المسافة بين الخط المذكور والحدود تنخفض الى مسافة ٩٠٠ر٠ كيلومتر ، وذلك الى النقطة (ح١) التي تبعد عن النقطة (ح) بمسافة قدرها ٢٠٠ر٠ كيلو متر .

ومن النقطة (ح١) الى النقطة (ط) فان الحدود تتبع على بعد صفر كيلومتر ٩٠٠ متر الى الغرب من الطريق المارة شرقي أجيلة .

وتقع النقطة (ط) ، على بعد صفر كيلو متر ٩٠٠ من خط الطريق المار شرقي أجيلة في النقطة التي تتجه منها الطريق ذاتها جنوبا .

وابتداء من النقطة (ط) فان الحدود تتبع خطا يصل الى بعد كيلو متر واحد شمال حسي السلان ، ثم تدور حول الحسي ، وابتداء من النقطة الواقعة على بعد كيلو متر واحد جنوبي الحسي ، تتبع خط عرض هذه النقطة الى النقطة (ى) .

وتحدد النقطة (ى) على أنها تقع على بعد كيلو متر واحد غربي تقاطع خط العرض المذكور وخط الطريق المار شرقي اجيليه .

ومن (ى) الى (ك) فان الحدود تتبع على بعد كيلو متر واحد خط الطريق المار شرقي أجيليه .

وتقع النقطة (ك) على بعد كيلو متر واحد غربي النقطة (ل) .

والنقطة (ل) وهي ملتقى الطريقين اللتين تمر احداهما بئين هالوين ، والآخرى بتلماس ، ترتبط بالنقطة (ك) على خط مستقيم .

وابتداء من النقطة (ل) فان الحدود تتبع خط الطريق المار بتلماس علما بأن الطريق ذاتها تقع في الاراضي الليبية . وهذا الخط يتصل بالنقطة (م) التي هي تقاطع الطريق المذكور وخط قاع واد (Thalweg) .

النقطة (ن) الواقعة على بروز ترتبط بالنقطة (م) على خط مستقيم .

وترتبط النقطة (س) بالنقطة (ن) على خط مستقيم .

أما النقطة (ع) التي هي النقطة الفلكية لتان مزادج فهي ترتبط بالنقطة (س) على خط مستقيم .

٢) القسم الجنوبي
(خريطة افريقيا قياس ١/٠٠٠ر٠٠٤ ، نوع خاص للاقاليم الصحراوية)

النقطة (ف) ، التي هي تقاطع الخط الذى يصل النقطة الفلكية السالفة الذكر ببئر أوسيجين المردومة والطريق الممتدة من تان كينا الى فورت تارات ، ترتبط بالنقطة (ع) على خط مستقيم .

[ARABIC TEXT — TEXTE ARABE]

طرابلس الغرب في ١٩ ديسمبر ١٩٥٦

تعين خط الحدود بين غدامس (غارة الحامل) وغات
(خط عرض الجامع الكبير)

اختارت اللجنة المشتركة الوثائق الاتية لتحديد النقاط الضرورية لتعيين الحدود .

أ) خرائط مؤقتة لمنطقة الحدود الجزائرية الليبية مابين خطي العرض ٢٦ درجة و ٣٠ دقيقة ، و ٣٠ درجة و ١٠ دقائق شمالا ، من ثلاث ورقات متوسط مقياس رسمها ١/٢٠٠،٠٠٠ من وضع المعهد الجغرافي الوطني الفرنسي في سنة ١٩٥٦ على أساس تفسير طبوغرافي لصور فوتوغرافيه أخذها من الجو المعهد الجغرافي المذكور في السنوات ١٩٥٣ و١٩٥٤ و١٩٥٦ . وهذه الصور التي قياسها المتوسط ١/٥٠،٠٠٠ قد جمعت لتكون تخطيطات فوتوغرافية مع خفض قياسها المتوسط الى واقع ١/١١٠٠،٠٠٠ .

ب) وخرائط افريقيا مقياس رسمها ١/٥٠٠ر٠٠٠ (نوع خاص بالأقاليم الصحراوية) على ورقتين نشرها قسم الخدمة الجغرافية للجيش الفرنسي ، احداهما : فورت تارات في سنة ١٩٣٦ ، والأخرى : فورت شارليه في سنة ١٩٣٦ واستكملت في ١٩٤٣ .

والطريقة التي اتبعت لتعيين الحدود بدون التباس كانت بالرجوع الى الخرائط المؤقتة لمنطقة الحدود الجزائرية الليبية لاثبات النقط والخطوط التي هي المرجع بالنسبة لغارة الحامل الى منطقة عابرتين .

وابتداء من هذه المنطقة الى حد غات فقد رسمت هذه الخطوط والنقط على الخرائط من مقياس ١/٥٠٠،٠٠٠ .

١) القسم الشمالي
(خرائط مؤقتة لمنطقة الحدود الجزائرية الليبية)

نقطة الابتداء هي الحد الواقع على غارة الحامل على بعد ١٤ كيلومتر تقريبا جنوب غرب غدامس والمميزة بالرقم / ٢٣٣ في محضر تحديد خط الحدود الفرنسية التركية لسنة ١٩١١ (انظر النسخة المرفقة) .

النقطة (أ) الواقعة على الحافة الجنوبية لهضبة وعرة ترتبط بنقطة الابتداء بواسطة خط مستقيم .

النقطة (ب) الواقعة وسط هضبة صغيرة وعرة ترتبط بنقطة (أ) بواسطة خط مستقيم .

النقطة (ج) الواقعة شمال الضاية (البركة) التى تقع في اقصى الجنوب من بين مجموعة من اربع ترتبط بالنقطة (ب) بواسطة خط مستقيم .

النقطة (د) الواقعة على بروز ، ترتبط بالنقطة (ج) بواسطة خط مستقيم .

النقطة (هـ) وهي النقطة الفلكية المسماة على الخريطة المؤقتة لمنطقة الحدود الجزائرية الليبية

PROCÈS-VERBAL D'ABORNEMENT DE LA FRONTIÈRE FRANCO-TURQUE EN 1911

Le 17 février cette réunion a lieu et une longue discussion se développe. Les commissaires de la Tunisie répètent qu'ils ne peuvent refuser l'exécution littérale des termes de la convention mais qu'en raison de la configuration du terrain entre la borne 208 et l'oasis de Mzezzem la meilleure route caravanière de la Tunisie se trouve coupée à 6 km à l'Est de cette oasis ce qui, à leur avis, est contraire à l'esprit de la Convention. À l'appui de leur opinion ils donnent lecture du procès-verbal de la onzième séance de la Conférence de Tripoli. Ils estiment qu'il ressort nettement des paroles de Rechid Bey aussi bien que des déclarations de M. Des Portes de la Fosse, que les plénipotentiaires avaient la volonté d'assurer à la Tunisie une bonne route caravanière, en dehors des sables par conséquent. Si le tracé demandé par les commissaires de la Tunisie avait été admis, la frontière pouvait être marquée à 500 m de l'oasis de Mzezzem.

Les commissaires de la Sublime Porte objectent que la route Sinaoun-Mzezzem-Ghadamès passe elle-même très près des dunes et qu'il est nécessaire de lui conserver toute son indépendance.

Les commissions cependant s'accordent sur l'opportunité de reprendre le bornage à la borne 208 et de lui faire suivre à 2 km de distance la piste Mzezzem-Ghadamès, jusqu'à ce que l'examen du terrain ait fait trouver une solution intermédiaire acceptable pour les délégués des deux gouvernements.

Le même jour on construit la borne 209 (petit modèle) à 800 m au S. O. de la borne 208 et à proximité de la jonction des deux routes Djéniïen-Ghadamès et Sinaoun-Ghadamès.

En raison de l'impossibilité d'élever une construction stable sur les hautes dunes blanches qui dominent au N. E. la Sebkha Mzezzem, on adopte comme point frontière la plus élevée de ces dunes sur laquelle existe actuellement un signal géodésique en branchages coté 391; il est distant de 2.700 m de la borne 209.

La borne 210 (petit modèle) est construite à l'Ouest des dunes et à 4.700 m du signal précité.

Le 18 février, quatre emplacements de bornes sont adoptés sans discussion :

Borne 211 (petit modèle) à 2.100 m au S. O. de la précédente
Borne 212 (petit modèle) à 5.000 m d°
Borne 213 (petit modèle) à 1.800 m d°
Borne 214 (petit modèle) à 1.400 m d°

Le 20 février on construit encore :

Borne 215 (petit modèle) à 3.700 m au S. O. de la précédente
Borne 216 (petit modèle) à 3.500 m d°
Borne 217 (petit modèle) à 2.900 m d°
Borne 218 (petit modèle) à 3.600 m d°

Les deux commissions se mettent ensuite d'accord en adoptant pour les bornes suivantes une ligne intermédiaire entre les diverses solutions proposées.

Conformément à l'accord intervenu la veille les commissaires font construire le 21 février les quatre bornes suivantes :

Borne 219 (petit modèle) à 2.100 m. à l'O. de la précédente
Borne 220 (petit modèle) sur une *gara* rocheuse à 1.600 m à l'O. de la précédente
Borne 221 (petit modèle) sur une colline rocheuse à 2.100 m d°
Borne 222 (petit modèle) dans la *Sebkha* à 2.700 m d°

et deux autres le 23 février :

Borne 223 (petit modèle) à 2.800 m au S. O. de la borne 222 et sur un rocher du bord septentrional de la *Sebkha* située à l'Ouest de Gour El Hattaba
Borne 224 (petit modèle) à 4.400 m à l'O. de la précédente

On admet ensuite que la frontière passera par le sommet d'un gros massif de dunes connu sous le nom de Ghourd Messaouda. Un signal géodésique coté 401 marque actuellement ce sommet distant de 2.300 m de la borne 224.

La borne 225 est construite à 1.500 m à l'Ouest de Ghourd Messaouda.

À partir de ce point l'application au terrain des dispositions de la Conférence de Tripoli ne donne plus lieu à divergences d'opinion, et les 23 et 24 février les emplacements suivants sont adoptés :

Borne 226 (petit modèle) à 1.800 m au S. O. de la précédente
Borne 227 (petit modèle) à 1.500 m d°
Borne 228 (petit modèle) à 2.300 m au S. de la précédente
Borne 229 (petit modèle) à 2.800 m au S. d°
Borne 230 (petit modèle) à 3.100 m au S. d°
Borne 231 (petit modèle) à 1.900 m au S. d°
Borne 232 (petit modèle) à 1.400 m au S. d°
Borne 233 à 2.600 m au S. d°

Cette borne étant située sur un point visible de très loin (colline élevée désigné par les indigènes sous le nom de Garet Hamel) et distant d'environ 13 km de la ville de Ghadamès, les commissaires des deux gouvernements sont d'avis de terminer en ce point le bornage de la frontière et décident de donner à cette dernière borne (n° 233) une hauteur de 2 m 50.

La construction des dernières bornes est terminée le 26 février.

Le 27 février les deux commissions se réunissent à Ghadamès. Le Chef de Bataillon Donau, le Capitaine Meullé Desjardins, le Lieutenant Lecocq expriment au Lieutenant-Colonel Nechat Bey, au Major Djemil Bey, au Vice-Major Suleiman Bey leurs très sincères remerciements pour l'esprit de conciliation qu'ils ont apporté dans le règlement des questions qui donnaient lieu à divergence d'opinion. Le Bornage a pu ainsi se terminer plus tôt que les commissaires de la Tunisie ne l'espéraient. Un seul point reste à régler : L'emplacement de la borne 81, qui a été réservé (procès-verbal du 19 novembre) pour donner aux Cianes la facilité de décombler un vieux puits voisin de celui de Saniet Smeida, précédemment aménagé par le gouvernement tunisien. Les commissaires de la Tunisie rappellent les déclarations inscrites à la séance du 9 janvier à la suite de laquelle toute liberté a été laissée aux Cianes pour continuer leur travail de décomblement. Ils ajoutent avoir appris le 15 février que depuis les constatations faites le 1er janvier à l'expiration du délai prévu, ces indigènes tripolitains n'ont absolument rien fait pour achever le décomblement : celui-ci est resté arrêté à 24 m de profondeur, malgré les facilités à eux données par les autorités tant ottomanes que tunisiennes. Les commissaires de la Tunisie estiment en conséquence qu'ils ne sont plus fondés à proposer à leur gouvernement de prolonger à nouveau la tolérance qui a été accordée aux Cianes depuis trois mois de puiser l'eau à Saniet Smeida pour faciliter les travaux de ces indigènes et ils proposent à leurs collègues ottomans d'adopter pour la borne 81 un emplacement au Sud-Est de Saniet Smeida sur l'alignement des bornes 80 et 82.

Nechat Bey, Djemil Bey et Suleiman Cherket Bey sont également reconnaissants à leurs collègues : le Chef de Bataillon Donau, le Capitaine Meullé Desjardins, le Lieutenant

Lecocq de la bonne volonté qu'ils ont toujours témoignée pendant toute la durée des travaux de bornage heureusement terminés aujourd'hui.

En ce qui concerne le puits de Smeida, les commissaires ottomans regrettent que le décomblement de l'ancien puits par les Cianes n'ayant pu être achevé avec succès, ils ne soient pas à même de choisir l'emplacement des bornes autour de ce puits.

Ils estiment que cette question pouvant facilement être tranchée par un échange de correspondances entre les deux gouvernements, le choix de l'emplacement de la borne 81 ne comportera aucune difficulté.

Les commissaires de la Tunisie déclarent qu'ils auraient préféré terminer complètement la mission dont ils étaient chargés et construire la borne 81 qui clôturait entièrement le travail de délimitation. Mais en présence de la nécessité pour leurs collègues ottomans d'attendre la réponse de leur gouvernement à une question qu'ils lui ont soumise, les commissaires de la Tunisie ne peuvent qu'accepter l'ajournement de la pose de la borne 81. Les délais successifs accordés aux Cianes pour le décomblement du vieux puits de Saniet Smeida étant expirés il en résulte que, jusqu'à la solution à intervenir, le puits de Saniet Smeida aménagé par le gouvernement tunisien, continuera à être soumis entièrement à la surveillance des autorités tunisiennes sans droits d'usage pour les Cianes.

Le 28 février, le travail de délimitation étant terminé, sauf le choix de l'emplacement de la borne 81, les commissaires des deux gouvernements se réunissent pour clore leurs travaux. Les commissaires de la Tunisie font remarquer que les droits reconnus aux tribus tripolitaines d'abreuver leurs troupeaux aux puits d'Oglet El Himeur, Cheggat Mestoura, Aïn Nakhla et Aïn Ferths situés en territoire tunisien peuvent présenter des inconvénients pour le rétablissement des relations de bon voisinage entre les tribus des deux gouvernements. Le maghzen tunisien, qui reste chargé d'assurer le bon ordre à ces puits agira sans doute avec la plus grande impartialité et les troupeaux des deux pays pourront être abreuvés sur le pied de la plus parfaite égalité. Mais le maghzen ne sera pas toujours présent à chacun de ces puits lorsque des troupeaux tripolitains viendront y boire. Il est à craindre en outre que les troupeaux tripolitains venant à l'abreuvoir s'écartent du puits et cherchent à pâturer en territoire tunisien ce qui leur reste interdit. Ces inconvénients seraient évités si à chacun des quatre points d'eau précités les Tunisiens avaient un puits pour eux seuls et les Tripolitains un autre puits à eux réservé. Aussi les commissaires de la Tunisie demanderont à leur gouvernement et prient leurs collègues ottomans de demander au gouvernement de la Sublime Porte d'envisager une solution qui serait avantageuse aux bonnes relations de voisinage entre les tribus frontalières.

Un moyen assez simple d'obtenir ce résultat désirable consisterait à creuser un puits en territoire tripolitain en face de chacun des quatre points d'eau non aménagés d'Oglet El Himeur, Cheggat Mestoura, Aïn Nakhla, Aïn Ferths. Ce travail serait effectué par les soins du gouvernement tunisien et à mesure qu'un de ces nouveaux puits serait creusé en territoire tripolitain, les droits d'usage dont le puits tunisien correspondant est actuellement grevé se trouveraient annulés.

Les commissaires ottomans prennent acte de cette déclaration de leurs collègues de la Tunisie et s'engagent à faire part à leur gouvernement de ces desiderata.

FAIT en double à Ghadamès le premier mars mil neuf cent onze.

Les Commissaires de la Sublime Porte :
(*Signé*) NECHAT
(*Signé*) DJEMIL
(*Signé*) SULEIMAN

Les Commissaires de la Tunisie :
(*Signé*) R. DONAU
(*Signé*) Meullé DESJARDINS
(*Signé*) LECOCQ

DOCUMENT C

I

LÉGATION DE FRANCE EN LIBYE

Tripoli d'Afrique, le 19 décembre 1956

Excellence,

Étant donné que le tracé de la frontière algéro-libyenne traverse l'aérodrome situé au Nord-Nord-Est du massif d'Edjele et connu sous le nom de Maison Rouge, il a été convenu que le Gouvernement Libyen donnerait en location au Gouvernement Français, pour une durée de vingt années, contre paiement d'un loyer annuel d'une livre libyenne, une parcelle de terrain à usage exclusif de terrain d'aviation et comprenant :

1°) La partie de la piste d'aviation située en territoire libyen;
2°) Une bande de sécurité de 200 mètres de largeur entourant la surface ci-dessus.

Il est admis que cette location prend date à partir du 10 août 1955.

Il a été convenu également que, pendant la durée de la location, le Gouvernement Libyen n'exercerait sur la parcelle louée au Gouvernement français, aucun contrôle administratif, judiciaire, policier ou douanier, et veillerait à ce qu'aucun édifice susceptible d'entraver la circulation aérienne ne soit érigé à proximité, conformément aux règlements internationaux en vigueur.

Il est entendu que les avions appartenant au Gouvernement Libyen ou utilisés par lui auront la faculté, sous préavis, d'utiliser l'aérodrome d'Edjele-Maison Rouge; les autres avions libyens pourront jouir des mêmes facilités sous réserve d'une autorisation demandée par les autorités libyennes.

Les modalités d'application seront réglées par la voie diplomatique ordinaire.

Je vous serais reconnaissant de bien vouloir me confirmer l'accord du Gouvernement Libyen sur les dispositions qui précèdent.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Le Président de la Délégation Française :
G. BALAŸ

Son Excellence Monsieur Ali Sahli
Ministre des Affaires Étrangères
Président de la Délégation Libyenne

II

MINISTÈRE DES AFFAIRES ÉTRANGÈRES
DU ROYAUME-UNI DE LIBYE

Tripoli d'Afrique, le 19 décembre 1956

Excellence,

Vous avez bien voulu m'adresser au nom de Votre Gouvernement la lettre suivante :

[*Voir lettre I*]

J'ai l'honneur de vous confirmer l'accord du Gouvernement Libyen sur ces propositions.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Le Président de la Délégation Libyenne :
Ali Sahli

Son Excellence Monsieur Georges Balaij
Ambassadeur de France
Président de la Délégation Française

II

المملكة الليبية المتحدة
وزارة الخارجية

طرابلس الغرب في ١٩ ديسمبر ١٩٥٦

ياصاحب السعادة ،

لقد استلمت بتاريخ اليوم الرسالة الآتي نصها الموجهة الينا باسم حكومتكم :

[*See letter I – Voir lettre I*]

وأتشرف بابلاغكم موافقة الحكومة الليبية على هذه المقترحات .

وتفضلوا ، ياصاحب السعادة ، بقبول اسمى عبارات التقدير ،

على الساحلي

صاحب السعادة جورج بالاى
سفير فرنسا ورئيس الوفد الفرنسى
طرابلس

[ARABIC TEXT — TEXTE ARABE]

I

المفوضية الفرنسية
بليبيا

طرابلس فى ١٩ ديسمبر ١٩٥٦

ياصاحب السعادة ،

بما أن خط الحدود الجزائرية الليبية تمر بالمطار الكائن شمال شمالشرق مرتفع اجيلة ، والمعروف باسم « ميزون روج » فقد تم الاتفاق على أن توجر الحكومة الليبية الى الحكومة الفرنسية لمدة عشرين سنة مقابل دفع ايجار سنوى قدره جنيه ليبي واحد قطعة أرض يقتصر استعمالها كمهبط للطائرات وتحتوى على : —

(١) جزء مهبط الطائرات والكائن داخل الاراضي الليبية .

(٢) منطقة أمان عرضها ٢٠٠ متر تحيط بالمساحة المذكورة اعلاه .

ومن المتفق عليه أن يكون تاريخ التأجير ساريا اعتبارا من ١٠ اغسطس ١٩٥٥ .

كما تم الاتفاق كذلك على أن الحكومة الليبية لن تمارس طول مدة الايجار أية مراقبة ادارية أو قضائية أو بوليسية أو جمركية على قطعة الارض المؤجرة للحكومة الفرنسية . كما ستعمل الحكومة الليبية على الا يشيد أى بناء قريب من المنطقة من شأنه أن يعرقل حركة الطيران وذلك وفقا للقوانين الدولية السارية .

ومن المتفق عليه أن الطائرات المملوكة للحكومة الليبية أو المستعملة من قبلها ستنتفع من مطار أجيلة « ميزون روج » وذلك باعلان سابق ويجوز للطائرات الليبية الاخرى أن تتمتع بنفس التسهيلات على أن تحصل على اذن تطلبه السلطات الليبية . وتنظم كيفية تطبيق ما تقدم بالطرق الدبلوماسية العادية .

وأكون شاكرا اذا تفضلتم بابداء موافقة الحكومة الليبية على هذه النصوص .

وتفضلوا ، ياصاحب السعادة ، بقبول فائق الاحترام ،

G. BALAŸ

صاحب السعادة علي الساحلي
وزير الخارجية ورئيس الوفد الليبي
طرابلس

DOCUMENT D

I

LÉGATION DE FRANCE EN LIBYE

Tripoli d'Afrique, le 19 Décembre 1956

Excellence,

Me référant à l'accord que nous avons signé aujourd'hui, au nom de nos Gouvernements respectifs au sujet de la détermination de la frontière algéro-libyenne entre Ghadamès et Ghat, et me référant également aux conversations qui se sont déroulées entre nous au cours des négociations qui ont précédé la signature dudit accord, j'ai l'honneur de rappeler les bonnes dispositions dont vous avez bien voulu faire montre à l'égard de certains problèmes de communications posés au Gouvernement Français, qui, en vue de faciliter ses liaisons entre la région de Tarat et celle de Tin Alkoum, a l'intention de construire une route reliant entre elles ces deux localités.

Je prends note, en remerciant Votre Excellence, des assurances que la Délégation Libyenne a bien voulu donner à la Délégation Française, assurances selon lesquelles le Gouvernement Libyen laissera construire sur son territoire les tronçons de cette route que la nature du terrain exigerait d'y établir, étant entendu évidemment que ces tronçons resteraient propriété libyenne.

Il est convenu, d'autre part, que les tronçons de la dite route, située en territoire libyen, seront considérés comme route franche, et que les véhicules civils et militaires français pourront y circuler librement, sans être astreints, à l'entrée et à la sortie du territoire libyen comme au cours de leur passage, à une autorisation ou à une notification préalable, ni à un contrôle administratif, militaire, de douane ou de police.

Le Gouvernement Français est prêt à désigner des experts en vue d'élaborer, d'accord avec les experts que désignera le Gouvernement Libyen, les détails d'application de ces dispositions.

Celles-ci devraient notamment prévoir que toutes facilités seraient données en territoire libyen aux entreprises françaises pour la construction et l'entretien de cette route.

Je vous serais obligé de bien vouloir me confirmer l'accord du Gouvernement Libyen sur les propositions qui précèdent.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Le Président de la Délégation Française :
G. Balay

Son Excellence Monsieur Ali Sahli
Ministre des Affairs Étrangères
Président de la Délégation Libyenne

II

MINISTÈRE DES AFFAIRES ÉTRANGÈRES
DU ROYAUME-UNI DE LIBYE

Tripoli d'Afrique, le 19 Décembre 1956

Excellence,

Vous avez bien voulu m'adresser au nom de Votre Gouvernement la lettre suivante en date de ce jour :

[*Voir lettre I*]

J'ai l'honneur de vous confirmer l'accord du Gouvernement Libyen sur ces propositions.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

Le Président de la Délégation Libyenne :
Ali Sahli

Son Excellence Monsieur Georges Balaÿ
Ambassadeur de France
Président de la Délégation Française

II

المملكة الليبية المتحدة
وزارة الخارجية

طرابلس الغرب في ١٩ ديسمبر ١٩٥٦

ياصاحب السعادة ،

لقد استلمت بتاريخ اليوم الرسالة الآتي نصها الموجهة الينا باسم حكومتكم :

[*See letter I – Voir lettre I*]

وأتشرف بابلاغكم موافقة الحكومة الليبية على هذه المقترحات .

و تفضلوا ، يا صاحب السعادة ، بقبول اسمى عبارات التقدير ،

علي الساحلي

صاحب السعادة جورج بالاى
سفير فرنسا ورئيس الوفد الفرنسي
طرابلس

[Arabic text — Texte arabe]

I

المفوضية الفرنسية
بليبيا

طرابلس فى ١٩ ديسمبر ١٩٥٦

ياصاحب السعادة ،

أشير الى الاتفاق الذى وقعناه اليوم باسم حكومتينا بخصوص تعيين الحدود الجزائرية الليبية بين غدامس وغات ، وأشير كذلك الى المحادثات التى دارت بيننا اثناء المفاوضات التى سبقت التوقيع على الاتفاق المذكور ، أتشرف بأن انوه بالاستعدادات الطيبة التى أبديتموها بشأن بعض مشاكل المواصلات التى تواجه الحكومة الفرنسية التى تنوى ، فى سبيل تسهيل الربط بين اقليمى تارات وتين الكوم ، انشاء طريق يربط بين هذين الموقعين .

وآخذ علما ، وأنا شاكرا لسعادتكم ، بتأكيدات الوفد الليبى التى تكرم فأظهرها للوفد الفرنسي ، تلك التأكيدات التى بمقتضاها تسمح الحكومة الليبية بانشاء اقسام من هذا الطريق داخل أراضيها حسب ما تقتضيه طبيعة الارض . ومن المفهوم بطبيعة الحال أن هذه الاقسام من الطريق تبقى ملكية ليبية .

ومن ناحية اخرى ، فانه من المتفق عليه أن هذه الاقسام من الطريق المذكورة الواقعة داخل الاراضى الليبية تعتبر طريقا حره (**Route Franche**) وأن العربات الفرنسية المدنية منها والعسكرية يجوز لها ان تمر عليها بحرية وبدون أن تكون خاضعة لترخيص أو اعلان سابق ، كذلك لا تخضع لمراقبة ادارية ولا عسكرية سواء من الجمارك أو من البوليس ، لا فى دخولها الى الاراضي الليبية ولا في خروجها منها وكذلك اثناء مرورها .

والحكومة الفرنسية على استعداد لتعيين خبراء لتهيئة تفاصيل تطبيق هذه الاوضاع بالاتفاق مع الخبراء الذين تعينهم الحكومة الليبية .

وينبغى أن تتضمن هذه الاوضاع توفير التسهيلات الى المؤسسات الفرنسية لانشاء وصيانة هذا الطريق .

وأكون شاكرا لو تفضلتم بابداء موافقة الحكومة الليبية على هذه المقترحات

وتفضلوا ، ياصاحب السعادة ، بقبول فائق الاحترام ،

G. Balay

صاحب السعادة علي الساحلي
وزير الخارجية ورئيس الوفد الليبي
طرابلس

[TRANSLATION — TRADUCTION]

No. 4340. EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT[1] TO DELIMIT THE FRANCO-LIBYAN FRONTIER BETWEEN THE GOVERNMENT OF FRANCE AND THE GOVERNMENT OF LIBYA. TRIPOLI, 26 DECEMBER 1956

I

LEGATION OF FRANCE IN LIBYA

Tripoli, 26 December 1956

Your Excellency,

Our two Governments having decided to proceed to the delimitation of the Algerian-Libyan frontier between Ghat and Ghadames, as indicated in the Franco-Italian Arrangement of 19 September 1919, a Mixed Commission met to that end at Tripoli under the Chairmanship, on the Libyan side of His Excellency Mr. Ali Sahli, Minister of Foreign Affairs, and on the French side of Mr. Georges Balaij, Ambassador.

The Commission's work resulted in the formulation on 19 September 1956 of conclusions concerning the delimitation of the said frontier which were summarized in the following documents signed or initialled by the Chairman of each delegation :

A) Preamble,[2]
B) Definition of the line between Ghadames (Garet El Hamel) and Ghat (parallel of the Great Mosque)[3] with annexed maps,[4]
C) Letters concerning Edjele airfield,[5]
D) Letters concerning the road from Tarat to Tin Alkoum.[6]

I have to inform you that I have received full powers to confirm that the French Government is in agreement with the said conclusions, and I should be grateful if you would notify me of the Libyan Government's agreement in the matter.

I have the honour to be, etc.

(*Signed*) Jacques DUMARCAY

To His Excellency the Minister of Foreign Affairs
Tripoli

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[1] Came into force on 26 December 1956 by the exchange of the said letters.
[2] See p. 287 of this volume.
[3] See p. 288 of this volume.
[4] See inserts in a pocket at the end of this volume.
[5] See p. 293 of this volume.
[6] See p. 294 of this volume.

II

UNITED KINGDOM OF LIBYA
MINISTRY OF FOREIGN AFFAIRS

Tripoli, 26 December 1956

Your Excellency,

I am in receipt of the letter of today's date which you addressed to me on instructions from your Government and which reads as follows:

[*See letter I*]

I have the honour to inform you that the Libyan Government is in agreement with the said proposals.

I have the honour to be, etc.

(*Signed*) Ali Sahli

His Excellency Mr. Jacques Dumarcay
Minister Plenipotentiary and Envoy Extraordinary
of the French Republic
Tripoli

DOCUMENT A

LEGATION OF FRANCE IN LIBYA

Tripoli, 19 December 1956

DELIMITATION OF THE ALGERIAN-LIBYAN FRONTIER BETWEEN GHAT AND GHADAMES

The French Government and the Libyan Government having decided by common agreement to proceed to the delimitation of the Algerian-Libyan frontier between Ghat and Ghadames, as indicated in the Franco-Italian Arrangement of 12 September 1919, that task was entrusted to a Mixed Commission which held its meetings at Tripoli.

The Mixed Commission summarized the conclusions which it reached, and in accordance with which the said frontier shall be delimited, in the following documents:

1. Definition of the line between Ghadames (Garet El Hamel) and Ghat (parallel of the Great Mosque) and maps.
2. Letters concerning Edjele airfield.
3. Letters concerning the road from Tarat to Tin Alkoum.

G. Balaÿ
Chairman of the French Delegation

Ali Sahli
Chairman of the Libyan Delegation

DOCUMENT B

Tripoli, 19 December 1956

DEFINITION OF THE FRONTIER LINE BETWEEN GHADAMES (GARET EL HAMEL) AND GHAT (PARALLEL OF THE GREAT MOSQUE)

In order to establish the position of the points necessary for the determination of the frontier, the Mixed Commission chose the following documents :

A) Provisional maps of the Algerian-Libyan frontier zone between parallels 26°30' and 30°10' North, on three sheets[1] drawn to an average scale of 1/200,000, as published in 1956 by the French National Geographic Institute on the basis of a topographical interpretation of aerial photographs taken by the French National Geographic Institute in 1953, 1954 and 1956. Those photographs, on an average scale of 1/50,000, were assembled into photoplans which were reduced to an average scale of 1/100,000.

B) Maps of Africa on a scale of 1/500,000 (special type for the Saharan regions), on two sheets[1] drawn up by the Geographic Service of the French Army : one, entitled Fort Tarat, published in 1936; the other, entitled Fort Charlet, published in 1936 and completed in 1943.

The method adopted to determine the frontier without ambiguity was to use the provisional maps of the Algerian-Libyan frontier zone for indicating the reference points and lines from Garet Hamel to the Habertene region.

Between that region and Ghat, such points and lines were indicated on the maps drawn to a scale of 1/500,000.

I. NORTHERN SECTION

(Provisional maps of the Algerian-Libyan frontier zone)

The initial point is the frontier mark situated at Garet Hamel, approximately fourteen kilometres south-west of Ghadames, designated No. 233 in the record of the demarcation of the Franco-Turkish frontier in 1911 (see copy annexed hereto).[2]

Point A, situated on the southern point of an escarpment, is joined to the initial point by a straight line.

Point B, situated in the centre of a small escarpment, is joined to point A by a straight line.

Point C, situated to the north of the southernmost *Daia* of a group of four, is joined to point B by a straight line.

Point D, situated on an outcrop, is joined to point C by a straight line.

Point E, an astronomical point called Ouan Taredjeli on the provisional map of the Algerian-Libyan frontier zone, is joined to point D by a straight line.

Point F, situated on the north-eastern point of an escarpment, is joined to point E by a straight line.

From point F to point G the frontier follows, at a distance of one kilometre to the west, the line representing the track passing to the east of Edjele.

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[1] See inserts in a pocket at the end of this volume.

[2] See p. 290 of this volume.

Point G is situated on the southern border of the landing strip situated one kilometre to the west of the line representing the track passing to the east of Edjele.

From point G to point H the frontier follows, at a distance of one kilometre to the west, the line representing the track passing to the east of Edjele.

Between point H, which is situated on the thalweg line indicated on the map, and point H_1 situated 0.2 kilometres from point H, the distance between the track and the frontier is reduced to 0.9 kilometres.

From point H_1 to point I the frontier follows, at a distance of 0.9 kilometres to the west, the line representing the track passing to the east of Edjele.

Point I is situated at a distance of 0.9 kilometres from the line representing the track passing to the east of Edjele, at the point where the track assumes a southerly direction.

From point I, the frontier follows a line which arrives at a point one kilometre to the north of Hassi El Mislane, rounds the *Hassi* and, from a point situated one kilometre to the south thereof, follows the parallel of that last point to point J.

Point J is defined as being one kilometre west of the intersection of the said parallel and of the line representing the track passing to the east of Edjele.

From point J to point K the frontier follows, at a distance of one kilometre to the west, the line representing the track passing to the east of Edjele.

Point K is situated one kilometre west of point L.

Point L, the junction of two tracks, one passing through Tin Haliouine and the other through Tilmas, is joined to point K by a straight line.

From point L, the frontier follows the line representing the track passing through Tilmas, the track itself being in Libyan territory. That line reaches point M, which is the intersection of the aforesaid track and of a thalweg line.

Point N, situated on a outcrop, is joined to point M by a straight line.

Point O is joined to point N by a straight line.

Point P, which is the astronomical point of Tan Emezadj, is joined to point O by a straight line.

II. SOUTHERN SECTION

(Map of Africa on a scale of 1/500,000; special type for the Saharan regions)

Point Q, which is the intersection of the line joining the aforesaid astronomical point to the filled-in well at Aoussedjine and of the track from Tan Kena to Fort Tarat, is joined to point P by a straight line.

From that point, the frontier follows the track from Tan Kena to Fort Tarat as far as point R, the track itself being in French territory.

Point R is situated at the place where the aforesaid track passes the southern point of an escarpment.

Point S, situated on the escarpment immediately to the south of Ain El Kebir, is joined to point R by a straight line.

Point T, at the intersection of the line joining point S with the astronomical point of Tin Khiamine and of the parallel of the Great Mosque of Ghat, is joined to point S by a straight line.

G. BALAŸ	Ali SAHLI
Chairman of the French Delegation	Chairman of the Libyan Delegation

RECORD OF THE DEMARCATION OF THE FRANDO-TURKISH FRONTIER IN 1911

At the meeting held on 17 February a long discussion developed. The Tunisian Commissioners repeated that they could not refuse the literal execution of the terms of the Convention but that, by reason of the configuration of the terrain between frontier mark 208 and Mzezzem Oasis, the best caravan route in Tunisia would be cut at a point six kilometres east of the Oasis; that, in their opinion, seemed contrary to the spirit of the Convention. In support of that view, they cited the minutes of the eleventh meeting of the Tripoli Conference. They thought that it was clear from the words of Reschid Bey and from the statements of Mr. Des Portes de la Fosse that the plenipotentiaries had intended to ensure that Tunisia would possess a good caravan route, i.e. a route outside the sands. If the line proposed by the Tunisian Commissioners had been accepted, the frontier could have been drawn 500 metres from Mzezzem Oasis.

The Commissioners of the Sublime Porte objected that the road Sinaoun-Mzezzem-Ghadames also passed very close to the dunes and that it was necessary to keep it completely free.

The two Commissions agreed, however, that it was advisable to reconsider the demarcation at mark 208 and to make the frontier follow the track from Mzezzem to Ghadames, at a distance of two kilometres, until a survey of the terrain revealed an intermediate solution acceptable to the representatives of both Governments.

On the same day, mark 209 (small model) was erected at a point 800 metres south-west of mark 208 and close to the junction of the Djeniten-Ghadames and Sinaoun-Ghadames roads.

In view of the impossibility of erecting a stable structure on the high white dunes to the north-east of Sebkha Mzezzem, it was decided to adopt as a frontier point the highest of those dunes, on which there was an existing geodesic signal, marked elevation 391, that signal being at a distance of 2,700 metres from mark 209.

Mark 210 (small model) was erected to the west of the dunes, at a distance of approximately 4,700 metres from the aforesaid signal.

On 18 February, four frontier mark emplacements were adopted without discussion :

Mark 211 (small model), 2,100 metres south-west of the preceding mark
Mark 212 (small model), 5,000 metres south-west of the preceding mark
Mark 213 (small model), 1,800 metres south-west of the preceding mark
Mark 214 (small model), 1,400 metres south-west of the preceding mark

The following marks were erected on 20 February :

Mark 215 (small model), 3,700 metres south-west of the preceding mark
Mark 216 (small model), 3,500 metres south-west of the preceding mark
Mark 217 (small model), 2,900 metres south-west of the preceding mark
Mark 218 (small model), 3,600 metres south-west of the preceding mark

The two Commissions then agreed to adopt for the next set of marks a line representing a compromise between the various solutions proposed.

On 21 February, in conformity with the agreement reached the preceding day, the Commissioners ordered the erection of the four following marks :

Mark 219 (small model), 2,100 metres west of the preceding mark
Mark 220 (small model), on a rocky *gara*, 1,600 metres west of the preceding mark

Mark 221 (small model), on a rocky hill, 2,100 metres west of the preceding mark
Mark 222 (small model), in the *Sebkha*, 2,700 metres west of the preceding mark

And on 23 February they ordered the erection of the following two further marks:

Mark 223 (small model), 2,800 metres south-west of mark 222, on a rock of the northern edge of the *Sebkha* situated west of Gour el Hattaba
Mark 224 (small model), 4,400 metres west of the preceding mark

It was next agreed that the frontier would pass through the summit of a large massif of dunes known as the Ghourd Messaouda. That summit, lying at a distance of 2,300 metres from mark 224, bore a geodesic signal with marked elevation 401.

Mark 225 was erected 1,500 metres west of Ghourd Messaouda.

Thereafter the on-the-spot application of the provisions of the Tripoli Conference gave rise to no further differences of opinion, and the following emplacements were adopted on 23 and 24 February:

Mark 226 (small model), 1,800 metres south-west of the preceding mark
Mark 227 (small model), 1,500 metres south-west of the preceding mark
Mark 228 (small model), 2,300 metres south of the preceding mark
Mark 229 (small model), 2,800 metres south of the preceding mark
Mark 230 (small model), 3,100 metres south of the preceding mark
Mark 231 (small model), 1,900 metres south of the preceding mark
Mark 232 (small model), 1,400 metres south of the preceding mark
Mark 233, 2,600 metres south of the preceding mark

Since that mark was situated on a point visible from far away (high hill known by the native inhabitants as Garet Hamel) and lying at a distance of some thirteen kilometres from the town of Ghadamès, the Commissioners of the two Governments agreed to end the demarcation of the frontier at that point and decided to give that last mark (No. 233) a height of 2m. 50.

The construction of the last marks was completed on 26 February.

On 27 February the two Commissions met at Ghadamès. The *Chef de Bataillon* Donau, Captain Meullé Desjardins and Lieutenant Lecocq expressed their most sincere thanks to Lieutenant-Colonel Nechat Bey, Major Djenil Bey and Vice-Major Suleiman Bey for the spirit of conciliation which they had shown in the settlement of questions which had given rise to divergencies of opinion. It had thus proved possible to complete the demarcation earlier than the Tunisian Commissioners had expected. The sole outstanding point was the emplacement of mark 81, which had been left open (minutes of 19 November) in order to give an opportunity to the Ciani to clear an old well neighbouring that of Saniet Smeida, formerly maintained by the Tunisian Government. The Tunisian Commissioners recalled the statements recorded in the minutes of the meeting of 9 January, in consequence of which the Ciani were left absolutely free to continue the clearing work. On 15 February, however, it had come to their knowledge that since the findings of 1 January, on the expiry of the stipulated time limit, the Tripolitanian natives in question had done absolutely nothing to complete the clearing and work had been discontinued at a depth of twenty-four metres, despite the facilities extended by both the Ottoman and the Tunisian authorities. The Tunisian Commissioners consequently felt that they would no longer be justified in proposing to their Government a further extension of the permission granted to the Ciani over the past three months to draw water from Saniet Smeida in order to facilitate their work. The Tunisian

Commissioners therefore proposed to their Ottoman colleagues that mark 81 should be placed south-east of Saniet Smeida, on the alignment of marks 80 and 82.

Nechat Bey, Djemil Bey and Suleiman Cherket Bey also thanked their colleagues, *Chef de Bataillon* Donau, Captain Meullé Desjardins and Lieutenant Lecocq for the goodwill they had always displayed during the demarcation work which had been happily concluded that day.

So far as the well of Smeida was concerned, the Ottoman Commissioners regretted that the clearing of the old well by the Ciani had not been successfully completed and that they were accordingly in no position to chose the emplacement of frontier marks in the vicinity of that well.

They thought that, since that question could easily be settled through an exchange of correspondence between the two Governments, the choice of the emplacement for mark 81 would present no difficulty.

The Tunisian Commissioners stated that they would have preferred to complete the whole of the mission with which they had been entrusted and to erect mark 81, thus bringing the work of delimitation to a close. But in view of the fact that their Ottoman colleagues had to await the reply of their Government to a question which they had referred to it, the Tunisian Commissioners naturally agreed that the placing of mark 81 should be deferred. The successive extensions granted to the Ciani for the clearing of the old well at Saniet Smeida having expired, the well at Saniet Smeida which was maintained by the Tunisian Government would remain, until some solution could be found, under the exclusive supervision of the Tunisian authorities, without any right of user being reserved to the Ciani.

On 28 February, with the work of delimitation — except for the choice of the site of mark 81 — completed, the Commissioners of the two Governments met to close their business. The Tunisian Commissioners pointed out that the rights granted to Tripolitanian tribes to water their beasts at the wells of Oglet el Himeur, Cheggat Mestoura, Ain Nakhla and Ain Ferths, which were all situated in Tunisian territory, might hinder the restoration of good-neighbourly relations between the tribes of the two Governments. The Tunisian Makhzan, which was responsible for the maintenance of order at the wells, would doubtless act with the greatest impartiality and it would be possible for the herds of the two countries to be watered on a footing of absolute equality. But the Makhzan would not always be present at each well when the Tripolitanian herds were brought to water. There was also the risk that the Tripolitanian herds brought to water might stray from the well and try to graze on Tunisian territory, which they were forbidden to do. Those difficulties would be eliminated if, at each of the four watering points concerned, the Tunisians had a well for themselves alone and the Tripolitanians had another well reserved for them. The Tunisian Commissioners would accordingly ask their Government, and hoped that their Ottoman colleagues would similarly request the Government of the Sublime Porte, to consider a solution conducive to good-neighbourly relations between the frontier tribes.

A fairly simple means of obtaining that desirable result would be to sink a well in Tripolitanian territory opposite each of the four unimproved watering points at Oglet El Himeur, Cheggat Mestoura, Ain Nakhla and Ain Ferths. That work would be carried out by the Tunisian Government and, as soon as any one of those new wells was sunk in Tripolitanian territory, the rights of user currently encumbering the corresponding Tunisian well would come to an end.

The Ottoman Commissioners took note of that statement by their Tunisian colleagues and undertook to inform their Government of those desiderata.

DONE in duplicate at Ghadames on 1 March 1911.

The Commissioners of the Sublime Porte :	The Commissioners of Tunisia :
(*Signed*) NECHAT	(*Signed*) R. DONAU
(*Signed*) DJEMIL	(*Signed*) Meullé DESJARDINS
(*Signed*) SULEIMAN	(*Signed*) LECOCQ

DOCUMENT C

I

LEGATION OF FRANCE IN LIBYA

Tripoli, 19 December 1956

Your Excellency,

Since the Algerian-Libyan frontier line crosses the airfield situated to the north-north-est of the Edjele Massif and known by the name of Maison Rouge, it was agreed that the Libyan Government would lease to the French Government, for a term of twenty years, at an annual rent of £1 Libyan, a parcel of land to be used exclusively as a landing field and comprising :

(1) The part of the landing strip situated in Libyan territory;
(2) A security belt 200 metres wide around the area specified hereabove.

It was agreed that the lease should be deemed effective from 10 August 1955.

It was also agreed that, during the life of the lease, the Libyan Government would not exercise over the land let to the French Government any administrative, judicial, police or customs control and would ensure that no structure liable to hinder air traffic was erected in the vicinity, in conformity with the international regulations in force.

It is understood that aircraft belonging to or used by the Libyan Government shall be entitled to use the Edjele-Maison Rouge airfield, subject to prior notice; other Libyan aircraft shall be able to enjoy the same facilities, subject to authorization being requested by the Libyan authorities.

The details of application shall be settled through the ordinary diplomatic channel.

I should be grateful if you would confirm the Libyan Government's agreement to the foregoing provisions.

I have the honour to be, etc.

G. BALAY
Chairman of the French Delegation

His Excellency Mr. Ali Sahli
Minister of Foreign Affairs
Chairman of the Libyan Delegation

II

UNITED KINGDOM OF LIBYA
MINISTRY OF FOREIGN AFFAIRS

Tripoli, 19 December 1956

Your Excellency,

You were good enough to address the following letter to me on behalf of your Government :

[*See letter I*]

I have the honour to confirm that the Libyan Government is in agreement with these proposals.

I have the honour to be, etc.

Ali SAHLI
Chairman of the Libyan Delegation

His Excellency Mr. Georges Balaij
Ambassador of France
Chairman of the French Delegation

DOCUMENT D

I

LEGATION OF FRANCE IN LIBYA

Tripoli, 19 December 1956

Your Excellency,

With reference to the agreement signed by us today, on behalf of our respective Governments, regarding the determination of the Algerian-Libyan frontier between Ghadames and Ghat, and with reference also the conversations which took place between us during the negotiations which preceded the signing of that agreement, I have the honour to recall the helpful attitude which you kindly displayed with regard to certain communications problems facing the French Government, which proposes, with a view to facilitating its communications between the region of Tarat and that of Tin Alkoum, to construct a road connecting those two places.

In thanking you, I take note of the assurances which the Libyan delegation kindly gave to the French delegation, that the Libyan Government will permit the construction on its territory of the sections of that road which the nature of the terrain may require to pass therethrough, it being naturally understood that those sections would remain Libyan property.

It is also agreed that the sections of that road which may be situated in Libyan territory shall be regarded as a free road, and that French civil and military vehicles shall be entitled to circulate thereon freely, without being subject, either on entering and leaving Libyan territory or in transit, to any previous authorization or notification, or to any administrative, military, customs or police control.

The French Government is prepared to appoint experts to elaborate, in agreement with experts appointed by the Libyan Government, the details of application of these provisions.

These details should provide, in particular, that every facility shall be extended in Libyan territory to French undertakings in the construction and maintenance of the road.

I should be grateful if you would kindly confirm that the Libyan Government is in agreement with the foregoing proposals.

I have the honour to be, etc.

G. Balaÿ
Chairman of the French Delegation

His Excellency Mr. Ali Sahli
Minister of Foreign Affairs
Chairman of the Libyan Delegation

II

UNITED KINGDOM OF LIBYA
MINISTRY OF FOREIGN AFFAIRS

Tripoli, 19 December 1956

Your Excellency,

Your were good enough to address to me on behalf of your Government the following letter of today's date :

[*See letter I*]

I have the honour to confirm that the Libyan Government is in agreement with these proposals.

I have the honour to be, etc.

Ali Sahli
Chairman of the Libyan Delegation

His Excellency Mr. Georges Balaÿ
Ambassador of France
Chairman of the French Delegation

Annex 31

ACCORDS PARTICULIERS CONCLUS LES 11, 13 ET 15 AOÛT 1960 ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE, D'UNE PART, ET LES GOUVERNEMENTS RESPECTIFS DE LA RÉPUBLIQUE CENTRAFRICAINE, DE LA RÉPUBLIQUE DU CONGO ET DE LA RÉPUBLIQUE DU TCHAD, D'AUTRE PART

Journal officiel de la République française, 24 novembre 1960,
pp. 10459-10463 and 10475-10480.

Décret n° 60-1230 du 23 novembre 1960 portant publication des accords particuliers conclus les 11, 13 et 15 août 1960 entre le Gouvernement de la République française, d'une part, et les Gouvernements respectifs de la République centrafricaine, de la République du Congo et de la République du Tchad, d'autre part.

Le Président de la République,

Sur le rapport du Premier ministre et du secrétaire d'Etat aux relations avec les Etats de la Communauté,

Vu la Constitution, et notamment ses articles 86 et 87 ;

Vu la loi n° 60-1225 du 22 novembre 1960 portant approbation des accords particuliers conclus les 11, 13 et 15 août 1960 entre le Gouvernement de la République française, d'une part, et les Gouvernements respectifs de la République centrafricaine, de la République du Congo et de la République du Tchad, d'autre part,

Décrète :

Art. 1er. — Seront publiés au *Journal officiel* de la République française les accords particuliers suivants, conclus, en application de l'article 86, alinéas 3 et 5, de la Constitution, le 15 août 1960, entre le Gouvernement de la République française, d'une part, et les Gouvernements respectifs de la République centrafricaine, de la République du Congo et de la République du Tchad, d'autre part :

1° Accord de défense ainsi que l'annexe I sur l'aide et les facilités mutuelles en matière de défense commune, l'annexe II concernant le conseil de défense de l'Afrique équatoriale et l'annexe III concernant les matières premières et produits stratégiques ;

2° Accord de coopération monétaire, économique et financière ;

3° Accord relatif à l'enseignement supérieur.

Art. 2. — Seront publiés au *Journal officiel* de la République française les accords particuliers suivants, conclus, en application de l'article 86, alinéas 3 et 5, de la Constitution, le 13 août 1960, entre le Gouvernement de la République française, d'une part, et le Gouvernement de la République centrafricaine, d'autre part :

1° Accord particulier sur les conditions de participation de la République centrafricaine à la Communauté ;

2° Accord de coopération en matière de politique étrangère ;

3° Accord concernant l'assistance militaire technique et annexe concernant le statut des membres des forces armées françaises sur le territoire de la République centrafricaine ;

4° Accord en matière d'aide ;

5° Accord en matière domaniale ;

6° Accord de coopération culturelle ;

7° Convention d'établissement.

Art. 3. — Seront publiés au *Journal officiel* de la République française les accords particuliers suivants, conclus, en application de l'article 86, alinéas 3 et 5, de la Constitution, 15 août 1960, entre le Gouvernement de la République ançaise, d'une part, et le Gouvernement de la République du ngo, d'autre part :

1° Accord particulier sur les conditions de participation de République du Congo à la Communauté ;
2° Accord de coopération en matière de politique étrangère ;
3° Accord concernant l'assistance militaire technique et annexe oncernant le statut des membres des forces armées françaises r le territoire de la République du Congo ;
4° Accord en matière d'aide ;
5° Accord en matière domaniale ;
6° Accord de coopération culturelle ;
7° Convention d'établissement ;
8° Accord relatif au centre d'enseignement supérieur de Brazzaville.

Art. 4. — Seront publiés au *Journal officiel* de la République française les accords particuliers suivants, conclus, en application de l'article 86, alinéas 3 et 5, de la Constitution, le 11 août 1960, entre le Gouvernement de la République française, d'une part, et le Gouvernement de la République du Tchad, d'autre part :

1° Accord particulier sur les conditions de participation de la République du Tchad à la Communauté ;
2° Accord de coopération en matière de politique étrangère ;
3° Accord concernant l'assistance militaire technique et annexe concernant le statut des membres des forces armées françaises sur le territoire de la République du Tchad ;
4° Accord en matière d'aide ;
5° Accord en matière domaniale ;
6° Accord de coopération culturelle ;
7° Convention d'établissement.

Art. 5. — Le Premier ministre et le secrétaire d'Etat aux relations avec les Etats de la Communauté sont chargés de l'exécution du présent décret.

Fait à Paris, le 23 novembre 1960.

C. DE GAULLE.

Par le Président de la République :

Le Premier ministre,
MICHEL DEBRÉ.

Le secrétaire d'Etat
aux relations avec les Etats de la Communauté,
JEAN FOYER.

ACCORDS PARTICULIERS CONCLUS LES 11, 13 ET 15 AOUT 1960, ENTRE LE GOUVERNEMENT DE LA REPUBLIQUE FRANÇAISE ET LES GOUVERNEMENTS RESPECTIFS : DE LA REPUBLIQUE CENTRAFRICAINE, DE LA REPUBLIQUE DU CONGO ET DE LA REPUBLIQUE DU TCHAD

Accords quadripartites.

Le Gouvernement de la République française,
Le Gouvernement de la République centrafricaine,
Le Gouvernement de la République du Congo et
Le Gouvernement de la République du Tchad,

Considérant que par l'effet de l'entrée en vigueur des accords de transfert des compétences de la Communauté, la République centrafricaine, la république du Congo et la République du Tchad ont accédé à l'indépendance et que la République française a reconnu leur indépendance et leur souveraineté,

Conscients des responsabilités qui leurs incombent en ce qui concerne le maintien de la paix, conformément aux principes de la Charte des Nations Unies,

Considérant que la République centrafricaine, la République du Congo et la République du Tchad manifestent la volonté de coopérer avec la République française au sein de la Communauté à laquelle elles participent désormais dans les conditions prévues aux accords conclus à cet effet,

Désireux de déterminer les modalités de leur coopération en matière de défense,

Sont convenus de ce qui suit :

Art. 1er. — La République centrafricaine, la République du Congo et la République du Tchad conviennent d'organiser avec la République française un système commun afin de préparer et d'assurer leur défense et celle de la Communauté dont elles font partie.

Art. 2. — Les parties contractantes se prêtent à cet effet aide et assistance et se concertent d'une manière permanente sur les problèmes de défense.

Les problèmes généraux de défense de la Communauté sont traités en conférence des chefs d'Etat et de Gouvernement.

Les problèmes régionaux de défense au niveau des trois Etats d'Afrique équatoriale sont traités par le conseil de défense de l'Afrique équatoriale.

Les problèmes locaux de défense au niveau de chaque Etat sont traités par un comité de défense.

Art. 3. — La République centrafricaine, la République du Congo et la République du Tchad sont responsables de leur défense intérieure et extérieure.

A cette fin, chacune de ces Républiques dispose de forces armées nationales.

Ces forces armées nationales participent, avec les forces armées françaises, sous un commandement unique, au système commun de défense organisé par le présent accord.

Art. 4. — Chacune des parties contractantes s'engage à donner aux autres toutes facilités et toutes aides nécessaires à la défense et en particulier à la constitution, au stationnement, à la mise en condition et à l'emploi des forces de défense.

Sur le territoire de la République centrafricaine, de la République du Congo et de la République du Tchad, les forces de défense disposent des installations militaires et bénéficient des droits et facilités nécessaires à leur existence, leur entraînement et leur sécurité ainsi qu'à l'exécution de leurs missions.

En particulier afin de permettre à la République française d'assumer ses responsabilités dans la défense commune et à l'échelle mondiale, la République centrafricaine, la République du Congo et la République du Tchad reconnaissent aux forces armées françaises la libre disposition des bases qui leur sont nécessaires.

Art. 5. — Les forces de défense sont essentiellement les forces armées de la République centrafricaine, de la République du Congo et de la République du Tchad et les forces armées françaises chargées de la défense de la Communauté.

Art. 6. — La République française s'engage à apporter à la République centrafricaine, à la République du Congo et à la République du Tchad l'aide nécessaire à la constitution de leurs forces armées nationales.

Art. 7. — Des annexes définissent les modalités d'application du présent accord.

Art. 8. — Chacune des parties contractantes notifiera aux autres l'accomplissement des procédures constitutionnellement requises pour la mise en vigueur du présent accord et de ses annexes qui prendront effet à la date de la dernière notification.

Fait à Brazzaville, le 15 août 1960.

Pour le Gouvernement de la République française :
JEAN FOYER.

Pour le Gouvernement de la République centrafricaine :
DAVID DACKO.

Pour le Gouvernement de la République du Congo :
FULBERT YOULOU.

Pour le Gouvernement de la République du Tchad :
FRANÇOIS TOMBALBAYE.

ANNEXE I
sur l'aide et les facilités mutuelles en matière de défense commune.

Afin de réaliser l'aide et l'assistance qu'elles se sont engagées à se prêter pour la défense, les parties contractantes sont convenues des dispositions suivantes :

Art. 1er. — Les autorités militaires de chacune des parties contractantes reçoivent des autres parties contractantes tous les concours nécessaires à l'exercice de leurs responsabilités. Des conventions particulières interviendront, le cas échéant, à cet effet.

Art. 2. — Les forces armées de chacune des parties contractantes ont la faculté de circuler sur le territoire, dans l'espace aérien et dans les eaux territoriales des autres parties contractantes, d'organiser les exercices et manœuvres nécessaires à leur entraînement et d'utiliser l'infrastructure portuaire, maritime et fluviale, routière, ferroviaire et aérienne.

Elles ont également la faculté d'installer et d'utiliser sur le territoire et dans les eaux territoriales des autres parties contractantes les balisages aériens et maritimes et les moyens de transmission nécessaires à la sécurité et à l'accomplissement de leurs missions.

Art. 3. — Chacune des parties contractantes assure aux forces armées des autres parties contractantes le bénéfice des régimes et tarifs spéciaux d'admission en vigueur le 1er juillet 1960.

Art. 4. — Les parties contractantes fournissent les contingents nécessaires à la constitution des forces de défense prévus à l'article 3 de l'accord de défense.

La République centrafricaine, la République du Congo et la République du Tchad autorisent leurs ressortissants à servir dans les forces armées de chacune des autres parties contractantes.

Art. 5. — Sous réserve des dispositions de l'article 4 de l'accord général concernant l'assistance militaire technique conclu entre la République française et chacune des autres parties contractantes, celles-ci consacrent à la défense commune les installations, casernements, bâtiments, aérodromes et terrains utilisés pour la défense à la date de la signature du présent accord.

Des conventions particulières pourront créer des bases nouvelles, le cas échéant, par échange avec des installations existantes.

Art. 6. — Chacune des parties contractantes prendra, en ce qui la concerne, les mesures qu'exige la mission des forces armées pour la défense commune et notamment celles relatives à la réquisition des personnes et des biens et à la protection et la sécurité des personnels, installations et équipements.

Pour le Gouvernement de la République française :

JEAN FOYER.

Pour le Gouvernement de la République centrafricaine :

DAVID DACKO.

Pour le Gouvernement de la République du Congo :

FULBERT YOULOU.

Pour le Gouvernement de la République du Tchad :

FRANÇOIS TOMBALBAYE.

ANNEXE II

concernant le conseil de défense de l'Afrique équatoriale.

Art. 1er. — Le conseil de défense de l'Afrique équatoriale est constitué par :

Les chefs d'État ou de Gouvernement assistés chacun soit du ministre de la défense, soit du ministre de l'intérieur,

Le général commandant supérieur exerçant le commandement militaire en Afrique équatoriale,

Les hauts représentants du Président de la République française, Président de la Communauté dans chaque État.

En outre, peut être convoquée pour être entendue par le conseil, toute personnalité, en raison de sa compétence.

Art. 2. — Le conseil décide de son organisation et son fonctionnement.

Art. 3. — Pour toutes questions militaires, en particulier pour préparer les travaux du conseil de défense, le général commandant supérieur est habilité à réunir les hautes autorités militaires de la République centrafricaine, de la République du Congo et de la République du Tchad.

Art. 4. — Le secrétariat permanent du conseil de défense est assuré par les soins du général commandant supérieur.

Pour le Gouvernement de la République française :

JEAN FOYER.

Pour le Gouvernement de la République centrafricaine :

DAVID DACKO.

Pour le Gouvernement de la République du Congo :

FULBERT YOULOU.

Pour le Gouvernement de la République du Tchad :

FRANÇOIS TOMBALBAYE.

ANNEXE III

concernant les matières premières et produits stratégiques.

Art. 1er. — Dans l'intérêt de la défense commune, les parties contractantes décident de suivre une politique concertée des matières premières stratégiques et d'adopter en ce domaine les mesures prévues ci-après.

Art. 2. — Sont considérés comme matières premières et produits stratégiques :

Les hydrocarbures liquides ou gazeux,

L'uranium, le thorium, le lithium, le béryllium,

L'hélium, leurs minerais et composés.

Des modifications pourront être apportées à cette liste par échange de lettres entre les parties contractantes.

Art. 3. — La République française, la République centrafricaine, la République du Congo et la République du Tchad procèdent à des consultations régulières, notamment au sein de la conférence des chefs d'État et de Gouvernement et du conseil de défense, sur la politique qu'elles sont appelées à suivre dans le domaine des matières premières et produits stratégiques, compte tenu en particulier des besoins généraux de la défense commune, de l'évolution des ressources dans les États de la Communauté et de la situation du marché mondial.

Dans le cadre de la politique concertée, la République centrafricaine, la République du Congo et la République du Tchad tiennent la République française informée des mesures générales ou particulières qu'elles se proposent de prendre en ce qui concerne la recherche, l'exploitation et le commerce extérieur des matières premières et produits stratégiques. La République française communique à la République centrafricaine, la République du Congo et la République du Tchad les éléments d'appréciation dont elle dispose concernant les questions évoquées au présent alinéa. La République centrafricaine, la République du Congo et la République du Tchad l'informent des décisions prises.

Art. 4. — La République centrafricaine, la République du Congo et la République du Tchad réservent à la satisfaction des besoins de leur consommation intérieure les matières premières et produits stratégiques obtenus sur leur territoire. Elles accordent à la République française une préférence pour l'acquisition du surplus et s'approvisionnent par priorité auprès d'elle en ces matières et produits. Elles facilitent leur stockage pour les besoins de la défense commune et, lorsque les intérêts de cette défense l'exigent, elles prennent les mesures nécessaires pour limiter ou interdire leur exportation à destination d'autres pays.

Pour le Gouvernement de la République française :

JEAN FOYER.

Pour le Gouvernement de la République centrafricaine :

DAVID DACKO.

Pour le Gouvernement de la République du Congo :

FULBERT YOULOU.

Pour le Gouvernement de la République du Tchad :

FRANÇOIS TOMBALBAYE.

ACCORD DE COOPÉRATION

EN MATIÈRE MONÉTAIRE, ÉCONOMIQUE ET FINANCIÈRE, ENTRE LA RÉPUBLIQUE FRANÇAISE, LA RÉPUBLIQUE CENTRAFRICAINE, LA RÉPUBLIQUE DU CONGO ET LA RÉPUBLIQUE DU TCHAD

Le Gouvernement de la République française,
Le Gouvernement de la République centrafricaine,
Le Gouvernement de la République du Congo et
Le Gouvernement de la République du Tchad,

Considérant que par l'effet de l'entrée en vigueur des accords de transfert des compétences de la Communauté, la République centrafricaine, la République du Congo et la République du Tchad ont accédé à l'indépendance et que la République française a reconnu leur indépendance et leur souveraineté,

Considérant les relations particulières qu'entendent maintenir, en ce qui concerne notamment le régime monétaire et celui des échanges, la République centrafricaine, la République du Congo et la République du Tchad, ci-après dénommées « États d'Afrique équatoriale »,

Considérant que les États d'Afrique équatoriale manifestent leur volonté de poursuivre leur développement en étroite association entre eux et en collaboration avec les autres pays de la zone franc, tout en bénéficiant des possibilités d'échanges qui s'offrent à eux dans les autres parties du monde,

Considérant la volonté manifestée par ces États de coopérer avec la République française au sein de la Communauté à laquelle ils participent désormais dans les conditions prévues aux accords conclus à cet effet,

Sont convenus de ce qui suit :

TITRE Ier

De la monnaie.

Art. 1er. — La République française reconnaît que l'accession à la souveraineté internationale des États d'Afrique équatoriale leur confère le droit de créer une monnaie et un institut d'émission qui leur soient propres.

Art. 2. — Les États d'Afrique équatoriale confirment leur adhésion à l'union monétaire dont ils sont membres à l'intérieur de la zone franc.

Le franc C.F.A., émis par la Banque centrale des Etats d'Afrique équatoriale et du Cameroun dans les conditions en vigueur à la date d'effet du présent accord, demeure la monnaie légale ayant pouvoir libératoire sur toute l'étendue de leurs territoires.

Art. 3. — Les opérations de la Banque centrale dans chacun des Etats d'Afrique équatoriale feront l'objet, à une date qui sera fixée en commission mixte, d'écritures distinctes dans ses livres. Le comité groupant au sein de son conseil d'administration les représentants de la République française et ceux des Etats d'Afrique équatoriale se réunit de plein droit sur la demande de la représentation d'un Etat.

Art. 4. — Les directeurs des agences de la Banque centrale dans les Etats d'Afrique équatoriale sont proposés par la banque à l'agrément des Etats intéressés.

Art. 5. — La République française et les Etats d'Afrique équatoriale se reconnaissent mutuellement le droit de mettre fin, pour ce qui les concerne, au régime monétaire visé aux articles 2, 3 et 4 ci-dessus si ce régime leur paraissait devenir contraire à la sauvegarde des intérêts légitimes de l'une ou l'autre des parties. En ce cas, des négociations seront entamées au sein de la commission mixte prévue à l'article 23 du présent accord afin de déterminer, d'une part le délai préparatoire à la réforme, d'autre part les modalités de celle-ci pour autant qu'elles intéressent les parties contractantes et notamment les relations de la nouvelle monnaie avec le franc français et les autres unités monétaires de la zone franc, ainsi que les rapports du nouvel institut d'émission avec les autres organismes monétaires de la zone.

La République française s'engage à apporter, en cette hypothèse, aux Etats intéressés, dans toute la mesure du possible, l'assistance technique que ceux-ci lui demanderaient.

Art. 6. — Toute modification de la parité entre l'unité monétaire utilisée sur le territoire des Etats d'Afrique équatoriale et le franc français ne pourra intervenir que par accord entre les parties intéressées.

Le Gouvernement de la République française consultera les Gouvernements des Etats d'Afrique équatoriale dans le cadre des études pouvant être effectuées préalablement à toute modification éventuelle du rapport entre le franc français et les monnaies étrangères et négociera avec eux les mesures propres à sauvegarder les intérêts légitimes de leurs Etats.

Art. 7. — A compter de la signature du présent accord, toute modification aux statuts de la banque centrale des Etats de l'Afrique équatoriale et du Cameroun résultera d'un accord entre les Gouvernements des Etats d'Afrique équatoriale et les autres autorités compétentes.

Art. 8. — Sont confirmées les conventions conclues à la date d'effet du présent accord relatives aux relations entre le Trésor français et les Trésors des Etats d'Afrique équatoriale.

Titre II

Des échanges

Art. 9. — Les Etats d'Afrique équatoriale négocient et signent avec tous pays et organisations internationales des accords ou traités de commerce, des conventions douanières et des accords financiers, compte tenu des relations particulières qu'ils entretiennent entre eux, notamment dans le cadre de l'union douanière équatoriale.

Art. 10. — En vue notamment d'assurer la coordination de leurs politiques économiques à l'égard des tiers, les parties contractantes conviennent de se consulter dans le cadre de la commission mixte ou de tout organisme groupant plusieurs ou la totalité des Etats de la zone franc chaque fois que l'une des parties préparera la négociation d'accords, conventions, traités économiques ou financiers dont le contenu intéressera les partenaires.

Art. 11. — Les Etats d'Afrique équatoriale détermineront librement leur politique contingentaire et tarifaire sous réserve des engagements qu'ils souscrivent au sein ou en dehors de la zone franc et des limitations éventuelles arrêtées d'un commun accord en application des articles 13, 14 et 15 ci-dessous.

Art. 12. — Les parties contractantes conviennent de maintenir leurs relations économiques dans le cadre d'un régime préférentiel réciproque dont les modalités d'application pourront être, en tant que de besoin, précisées par des accords spéciaux.

Ce régime préférentiel a pour objet d'assurer à chacune des parties des débouchés privilégiés ; il doit comporter un ensemble équilibré d'avantages mutuels, notamment dans le domaine commercial et tarifaire, ainsi que dans celui des organisations de marchés.

Art. 13. — Sous réserve des nécessités de l'hygiène, de la sécurité et de l'ordre public et du respect des monopoles fiscaux, les marchandises originaires et en provenance des territoires de la République française ou des Etats d'Afrique équatoriale circulent librement entre ces territoires.

Ces mêmes marchandises bénéficient à l'entrée ou à la sortie de ces territoires de la franchise des droits de douane.

Des exceptions à ces deux principes, motivées par la mise en œuvre des organisations de marchés ou par les exigences du développement, peuvent être apportées d'un commun accord en commission mixte.

Art. 14. — Les Etats d'Afrique équatoriale bénéficient des organisations de marchés et des aides financières intéressant les produits de base existant au sein de la zone franc.

Ils s'engagent, en contrepartie, à respecter les règles et directives générales formulées dans ce domaine pour l'ensemble de la zone franc, sous réserve des aménagements jugés nécessaires et acceptés d'un commun accord au sein de la commission mixte.

Art. 15. — En vue d'assurer l'application du régime préférentiel réciproque visé à l'article 12 ainsi qu'une utilisation judicieuse des ressources de la zone franc, les programmes d'importation, établis par les Etats d'Afrique équatoriale en fonction des besoins de leur développement, sont arrêtés annuellement en commission mixte. Ces programmes fixent un plafond global en devises qui peut être assorti de plafonds partiels applicables soit à certaines catégories de biens, soit à certaines origines. Les importations réalisées au titre des accords commerciaux passés par les Etats d'Afrique équatoriale sont reprises dans ces plafonds.

Art. 16. — Toutes les recettes et les dépenses des Etats d'Afrique équatoriale sur les pays extérieurs à la zone franc sont exécutées par cession ou achat de devises étrangères sur le marché des changes de Paris.

Les opérations en devises des Etats d'Afrique équatoriale sont individualisées et reprises dans un « compte devises » qui permet à tout moment d'en suivre les réalisations.

Art. 17. — Les parties contractantes se consultent au sein de la commission mixte sur l'évolution de la balance des paiements et de la trésorerie en devises. Cette consultation intervient en particulier soit pour les accords de paiement que la République française se propose de négocier pour l'ensemble de la zone franc, soit pour les accords que les Etats d'Afrique équatoriale se proposent de conclure avec les pays tiers, notamment lorsque ces accords sont matérialisés par des prêts qui impliqueraient une sortie de devises.

Art. 18. — Les Etats d'Afrique équatoriale appliquent sur leur territoire, par l'intermédiaire des organismes compétents à la date d'effet du présent accord, la réglementation des changes de la zone franc ; les aménagements éventuels seront concertés en commission mixte.

Dans un délai à déterminer à compter de l'entrée en vigueur du présent accord, les parties contractantes se consulteront en vue de la création dans chacun des Etats d'Afrique équatoriale d'un office des changes placé sous l'autorité de chaque Gouvernement ; elles détermineront en commission mixte les modalités de fonctionnement de ces offices et les conditions de leur coordination avec les autorités centrales de la zone franc.

Les parties contractantes collaboreront à la recherche et à la répression des infractions à la réglementation des changes.

Art. 19. — Les investissements étrangers devant recevoir une application dans les Etats d'Afrique équatoriale sont soumis aux dispositions des articles 16 et 18 ci-dessus et donnent lieu à examen par les offices des changes intéressés. Toutefois s'ils dépassent un plafond à déterminer en commission mixte, ils sont examinés au sein de celle-ci, ou, en cas d'urgence, selon une procédure fixée par elle.

Titre III

De la participation aux organismes communs

Art. 20. — A l'échelon le plus élevé, la République française et les Etats d'Afrique équatoriale se concertent au sein de la conférence périodique des chefs d'Etat et de Gouvernement avec les autres Etats de la Communauté sur les problèmes généraux de la politique monétaire, économique et financière et sur ceux du développement, cette consultation pouvant être étendue, le cas échéant, à tous autres Etats de la zone franc.

Art. 21. — Les Etats d'Afrique équatoriale sont représentés au sein des organismes communs de la zone franc.

A ce titre, leur représentation est prévue notamment :

- au comité monétaire de la zone franc,
- au comité des investissements étrangers,
- au comité des affaires économiques et financières,
- à la commission des échanges commerciaux.

Les modalités d'application du présent article seront fixées en commission mixte.

Art. 22. — Un accord ultérieur déterminera les conditions dans lesquelles les Etats d'Afrique équatoriale participeront éventuellement au conseil supérieur du crédit pour l'harmonisation des principes généraux de la réglementation du crédit et de l'organisation bancaire.

Un autre accord déterminera les conditions de l'association des Etats d'Afrique équatoriale à la commission de contrôle des banques.

Art. 23. — Il est créé une commission mixte franco-équatoriale de composition paritaire.

Art. 24. — La commission mixte connaît, en tant que de besoin, de l'ensemble des problèmes concernant la coopération entre les parties contractantes dans les domaines visés aux titres I et II du présent accord, sans préjudice de la compétence éventuelle d'autres organismes spécialisés.

Art. 25. — La commission mixte se réunit au moins une fois par trimestre et, dans l'intervalle, à la demande de l'une des parties contractantes.

Elle arrête sa procédure de fonctionnement.

Elle peut constituer en son sein des comités restreints.

Art. 26. — Les attributions de la commission mixte sont consultatives hormis les cas prévus par le présent accord.

Art. 27. — Dans les trois mois suivant la date de mise en vigueur du présent accord une première réunion de la commission mixte sera tenue, afin de préciser, en tant que de besoin, les modalités de mise en œuvre effective de cet accord.

Art. 28. — Chacune des parties contractantes notifiera aux autres l'accomplissement des procédures constitutionnellement requises pour la mise en vigueur du présent accord qui prendra effet à la date de la dernière notification.

Fait à Brazzaville, le 15 août 1960.

Pour le Gouvernement de la République française :
JEAN FOYER.

Pour le Gouvernement de la République centrafricaine :
DAVID DACKO.

Pour le Gouvernement de la République du Congo :
FULBERT YOULOU.

Pour le Gouvernement de la République du Tchad :
FRANÇOIS TOMBALBAYE.

ACCORD RELATIF A L'ENSEIGNEMENT SUPERIEUR

ENTRE LA REPUBLIQUE FRANCAISE, LA REPUBLIQUE CENTRAFRICAINE,
LA REPUBLIQUE DU CONGO ET LA REPUBLIQUE DU TCHAD

Le Gouvernement de la République française,
Le Gouvernement de la République centrafricaine,
Le Gouvernement de la République du Congo et
Le Gouvernement de la République du Tchad,

Considérant que la République centrafricaine, la République du Congo et la République du Tchad entendent maintenir sur leurs territoires l'enseignement de caractère français comme instrument de leur développement national,

Considérant la nécessité pour ces mêmes Etats de couronner leurs divers cycles d'enseignement par un enseignement supérieur de valeur internationale,

Sont convenus de ce qui suit :

Art. 1er. — Les Gouvernements de la République centrafricaine, de la République du Congo et de la République du Tchad, prenant acte de l'effort accompli par la République française pour installer à Brazzaville un centre d'études administratives et techniques supérieures destiné à assurer la formation de leurs cadres, demandent au Gouvernement de la République française, qui accepte, de maintenir ce centre, de le développer et de l'ériger en centre d'enseignement supérieur.

Art. 2. — Le centre d'enseignement supérieur de Brazzaville sera un établissement public de droit français.

Les Gouvernements de la République centrafricaine, de la République du Congo et de la République du Tchad seront représentés au conseil d'administration.

Art. 3. — Le centre d'enseignement supérieur de Brazzaville sera doté par la République française dans des conditions propres à assurer, dans le cadre de son programme d'études, des enseignements de qualité égale aux enseignements correspondants dispensés dans les universités françaises.

Le plan de développement du centre d'enseignement supérieur de Brazzaville sera arrêté en commun par les parties contractantes dans la limite des crédits et des moyens pouvant être affectés à cette fin.

Dans le cadre de ce plan, le centre d'enseignement supérieur de Brazzaville développera les recherches et les enseignements répondant à sa vocation particulière au service de la Communauté et des Etats d'Afrique équatoriale.

Art. 4. — Les Gouvernements des Etats d'Afrique équatoriale faciliteront par tous les moyens en leur pouvoir le fonctionnement du centre d'enseignement supérieur.

Ils n'autoriseront pas d'autre part sur leurs territoires l'ouverture d'autres établissements d'enseignement supérieur sans consultation du Gouvernement de la République française.

Art. 5. — Les parties contractantes faciliteront à leurs ressortissants, notamment par l'octroi de bourses d'études, de prêts d'honneur et de bourses de recherche, par l'organisation de stages et, éventuellement, par des nominations à des emplois d'assistants, l'accès des établissements universitaires et culturels et des instituts de recherche scientifique ou autres relevant de leur autorité.

Art. 6. — Le Gouvernement de la République française s'emploiera en particulier à faciliter l'admission dans les grandes écoles françaises des candidats des Etats d'Afrique équatoriale reconnus aptes à en suivre l'enseignement. Ces étudiants ou élèves bénéficieront des droits et avantages accordés ou reconnus sur le territoire de la République française aux ressortissants français.

Art. 7. — Chacune des parties contractantes notifiera à l'autre l'accomplissement des procédures constitutionnellement requises pour la mise en vigueur du présent accord qui prendra effet à la date de la dernière notification.

Fait à Brazzaville, le 15 août 1960.

Pour le Gouvernement de la République française :
JEAN FOYER.

Pour le Gouvernement de la République centrafricaine :
DAVID DACKO.

Pour le Gouvernement de la République du Congo :
FULBERT YOULOU.

Pour le Gouvernement de la République du Tchad :
FRANÇOIS TOMBALBAYE.

Accords franco-tchadiens.

ACCORD PARTICULIER

SUR LES CONDITIONS DE PARTICIPATION DE LA RÉPUBLIQUE DU TCHAD À LA COMMUNAUTÉ

Le Gouvernement de la République française, d'une part ;

Le Gouvernement de la République du Tchad, d'autre part,

Considérant que, par l'effet de l'accord de transfert en date du 12 juillet 1960, entré en vigueur le 10 août 1960, la République du Tchad a accédé à l'indépendance et que la République française l'a reconnue en tant qu'État indépendant et souverain ;

Considérant que la République du Tchad manifeste la volonté de coopérer avec la République française au sein de la Communauté,

Sont convenus de ce qui suit :

Art. 1er. — La République du Tchad est membre de la Communauté à laquelle elle participe dans les conditions définies au présent accord et par des accords de coopération.

Art. 2. — La République du Tchad reconnaît que le Président de la République française est de droit Président de la Communauté.

Art. 3. — La République française et la République du Tchad participent à une conférence périodique des chefs d'État et de gouvernement réunie sous la présidence du Président de la Communauté pour se concerter sur les problèmes essentiels intéressant celle-ci.

Elles participent aussi à des comités de ministres ou d'experts auxquels sont représentés éventuellement les autres États.

Art. 4. — La République du Tchad a la faculté d'envoyer une délégation à un Sénat interparlementaire consultatif composé de délégués des assemblées législatives des États de la Communauté.

Art. 5. — Chacune des parties contractantes notifiera à l'autre l'accomplissement des procédures constitutionnellement requises pour la mise en vigueur du présent accord, qui prendra effet à la date de la dernière notification.

Fait à Fort-Lamy, le 11 août 1960.

Pour le Gouvernement de la République française :

JEAN FOYER.

Pour le Gouvernement de la République du Tchad :

FRANÇOIS TOMBALBAYE.

ACCORD DE COOPÉRATION

EN MATIÈRE DE POLITIQUE ÉTRANGÈRE ENTRE LA RÉPUBLIQUE FRANÇAISE ET LA RÉPUBLIQUE DU TCHAD

Le Gouvernement de la République française et le Gouvernement de la République du Tchad,

Considérant que par l'effet de l'accord de transfert en date du 12 juillet 1960 entré en vigueur le 10 août 1960, la République du Tchad a accédé à l'indépendance et que la République française l'a reconnue en tant qu'État indépendant et souverain ;

Considérant que la République du Tchad manifeste la volonté de coopérer avec la République française au sein de la Communauté à laquelle elle participe dans les conditions prévues aux accords en date de ce jour ;

Désireux d'affirmer la permanence des liens d'amitié qui unissent les deux peuples et reconnaissant que leurs politiques étrangères s'inspirent, dans l'esprit de la charte des Nations-Unies, d'un même idéal et des mêmes principes.

Sont convenus de ce qui suit :

Art. 1er. — Le Président de la République française, président de la Communauté, accrédite auprès de la République du Tchad un Haut Représentant. Ce Haut Représentant a rang et prérogatives d'ambassadeur. Il est le doyen du corps diplomatique au Tchad.

La République du Tchad accrédite auprès du Président de la République française, président de la Communauté, un Haut Représentant. Ce Haut Représentant a rang et prérogatives d'ambassadeur. Il lui est réservé une place privilégiée parmi les envoyés diplomatiques accrédités à Paris.

Art. 2. — Des postes consulaires seront établis sur le territoire de chacun des deux États. Leurs sièges sont fixés à l'annexe jointe au présent accord. Leurs circonscriptions seront définies par un accord ultérieur. D'autres postes consulaires pourront être ouverts d'un commun accord.

Art. 3. — La République française assure, à la demande de la République du Tchad, dans les Etats où celle-ci n'a pas de représentation propre, la représentation de la République du Tchad ainsi que la protection de ses ressortissants et de ses intérêts.

La République française assure, à la demande de la République du Tchad, sa représentation auprès des organisations internationales où celle-ci n'a pas de représentation propre.

A cet effet, le Gouvernement de la République du Tchad donne, par l'intermédiaire du Gouvernement de la République française, toutes directives aux agents diplomatiques et consulaires et aux délégués français.

Des fonctionnaires de la République du Tchad peuvent être accueillis dans les postes diplomatiques et consulaires de la République française et de la Communauté, afin de suivre les affaires intéressant la République du Tchad.

Art. 4. — Le Gouvernement de la République française et le Gouvernement de la République du Tchad se tiennent mutuellement informés et se consultent au sujet des problèmes de politique étrangère.

Afin de confronter leurs points de vue et de rechercher avant toute décision importante, une harmonisation de leurs positions et de leur action, ils se concertent de manière régulière, notamment au sein de la conférence des chefs d'Etat et de Gouvernement ainsi que dans des réunions périodiques des chefs d'Etat et de Gouvernement ou des ministres des affaires étrangères.

Dans le même esprit, les délégués des parties contractantes se concertent avant toutes négociations ou conférences techniques internationales intéressant la République française et la République du Tchad.

Art. 5. — Le Gouvernement de la République française prête au Gouvernement de la République du Tchad son concours pour l'organisation et la formation technique des cadres diplomatique et consulaire de la République du Tchad.

Art. 6. — La République française appuiera la candidature de la République du Tchad à l'Organisation des Nations Unies en temps utile pour qu'elle puisse être admise à la session de 1960, ainsi qu'aux institutions spécialisées qui en dépendent.

Art. 7. — Chacune des parties contractantes notifiera à l'autre l'accomplissement des procédures constitutionnellement requises pour la mise en vigueur du présent accord qui prendra effet à la date de la dernière de ces notifications.

Fait à Fort-Lamy, le 11 août 1960.

Pour le Gouvernement de la République française :

JEAN FOYER.

Pour le Gouvernement de la République du Tchad :

FRANÇOIS TOMBALBAYE.

ANNEXE CONCERNANT LES POSTES CONSULAIRES

En application de l'article 2 du présent accord :

1° Des postes consulaires français seront établis à Abeche, Fort-Archambault, Fort-Lamy, Largeau, Moundou.

2° Des postes consulaires de la République du Tchad seront établis à Bordeaux, Lyon, Marseille, Paris.

ACCORD

CONCERNANT L'ASSISTANCE MILITAIRE TECHNIQUE ENTRE LA RÉPUBLIQUE FRANÇAISE ET LA RÉPUBLIQUE DU TCHAD

Le Gouvernement de la République française, d'une part ;

Le Gouvernement de la République du Tchad, d'autre part,

Considérant que, par l'effet de l'accord de transfert en date du 12 juillet 1960, entré en vigueur le 10 août 1960, la République du Tchad a accédé à l'indépendance et que la République française l'a reconnue en tant qu'Etat indépendant et souverain ;

Considérant que la République du Tchad manifeste la volonté de coopérer avec la République française au sein de la Communauté à laquelle elle participe dans les conditions prévues aux accords en date de ce jour,

Sont convenus ce qui suit :

Art. 1er. — Conformément à l'article 6 de l'accord de défense entre la République française, la République centrafricaine, la République du Congo et la République du Tchad, la République française apporte son concours à la République du Tchad pour la constitution de sa gendarmerie et de son armée nationale.

Art. 2. — Le Gouvernement de la République du Tchad accepte que ses ressortissants servant actuellement dans les forces armées françaises et qui ne seront pas transférés pour servir dans les forces armées de la République du Tchad continuent leur service dans les forces armées françaises.

Les personnels transférés aux forces armées tchadiennes conservent dans ces forces le bénéfice des droits acquis par leurs services dans les forces armées françaises notamment en matière de pensions.

Les ressortissants de la République du Tchad pourront servir dans les forces armées françaises selon les règles en vigueur dans ces forces.

Art. 3. — La République française fournit à titre gratuit la première dotation en matériels et équipements nécessaires à la constitution des forces armées de la République du Tchad dans les limites fixées d'un commun accord.

Art. 4. — La République française tranférera à la République du Tchad les installations nécessaires à ses forces armées selon les modalités arrêtées en comité de défense.

Art. 5. — La République du Tchad s'engage à faire appel exclusivement à la République française pour l'entretien et les fournitures ultérieures des matériels et équipements destinés à ses forces armées.

Lorsqu'une fourniture n'est pas effectuée à titre gratuit, les modalités financières en sont fixées d'un commun accord.

Art. 6. — Les forces armées de la République du Tchad peuvent faire appel, pour leur soutien logistique, au concours des forces armées françaises.

Art. 7. — Une mission militaire française est mise à la disposition de la République du Tchad pour faciliter la mise sur pied, l'encadrement, l'instruction et l'administration de ses forces armées.

La liste des postes à pourvoir est fixée d'un commun accord.

Les personnels de la mission sont mis à la disposition de la République du Tchad pour tenir des emplois de leur qualification.

Art. 8. — Ces personnels sont soldés de tous leurs droits par la République française et sont logés, ainsi que leur famille par la République du Tchad.

Art. 9. — La mise à la disposition est déterminée pour une durée fixée conformément à la réglementation française sur les séjours extérieurs. Elle peut être renouvelée ou interrompue d'un commun accord.

Art. 10. — Les personnels militaires mis à la disposition de la République du Tchad demeurent sous juridiction militaire française dans les conditions prévues à l'annexe au présent accord. Ils sont soumis aux règles de la discipline générale en vigueur dans les forces armées de la République du Tchad.

Ils servent dans les forces armées de la République du Tchad selon les règles traditionnelles d'emploi de leur arme ou service. Il leur est reconnu le grade de la hiérarchie des forces armées de la République du Tchad correspondant à celui dont ils sont titulaires dans les forces armées françaises ou le grade immédiatement supérieur.

Toutes les décisions les concernant prises par le commandement de l'armée nationale de la République du Tchad doivent être communiquées au chef de la mission militaire française. Notamment les sanctions disciplinaires éventuellement encourues sont portées à la connaissance du chef de la mission militaire. Ces sanctions peuvent entraîner la réaffectation immédiate dans les forces armées françaises.

Inversement, toutes décisions de l'autorité militaire française les concernant doivent être portées à la connaissance du commandement militaire de l'armée nationale tchadienne.

Art. 11. — La République du Tchad s'engage à ne faire appel qu'à la République française pour la formation de ses cadres.

Les ressortissants de la République du Tchad sont admis par concours dans les écoles militaires françaises soit dans les mêmes conditions que les ressortissants français, soit dans la limite d'un contingent particulier.

En outre, pour hâter la formation des cadres, des ressortissants de la République du Tchad désignés par leur Gouvernement d'accord avec le Gouvernement français peuvent être admis comme stagiaires dans les grandes écoles et établissements militaires français.

La République française prend à sa charge les frais d'instruction des élèves et stagiaires dans les grandes écoles et établissements militaires français.

rt. 12. — Chacune des parties contractantes notifiera à l'autre complissement des procédures constitutionnellement requises ur la mise en vigueur du présent accord et de son annexe qui ndront effet à la date de la dernière notification.

'ait à Fort-Lamy, le 11 août 1960.

Pour le Gouvernement de la République française :
JEAN FOYER.

ur le Gouvernement de la République du Tchad :
FRANÇOIS TOMBALBAYE.

ANNEXE

ONCERNANT LE STATUT DES MEMBRES DES FORCES ARMÉES FRANÇAISES SUR LE TERRITOIRE DE LA RÉPUBLIQUE DU TCHAD

rt. 1er. — Les juridictions militaires françaises connaîtront des ractions imputées à un membre des forces armées françaises rsqu'elles auront été commises dans le service ou à l'intérieur bases et installations de ces forces.

ans les autres cas, les tribunaux de la République du Tchad ront compétents. Le Gouvernement de la République du Tchad nsidérera avec bienveillance toute demande émanant des autorités ançaises et ayant pour objet un transfert de juridiction en leur veur.

Lorsqu'il n'y aura pas eu transfert de juridiction, le prévenu ra, dans le cas où sa détention préventive sera prononcée par utorité judiciaire, détenu dans une prison dépendant de l'autorité ilitaire française. Celle-ci s'engage à le présenter devant les autorités judiciaires de la République du Tchad pour tous les actes de nstruction et pour le jugement. En cas de condamnation, la peine ra exécutée à la diligence des autorités françaises dans des ux et conditions dont la République du Tchad sera informée.

Les autorités de la République du Tchad ne pourront procéder à rrestation d'un membre des forces armées françaises qu'en cas flagrant délit. Elles en aviseront immédiatement les autorités ilitaires françaises et remettront l'intéressé à celles-ci dans le lai le plus court requis pour cette remise.

Art. 2. — Les enquêtes sont effectuées à l'intérieur des bases et stallations des forces armées françaises par les autorités fran ises. Toutefois, lorsque les droits d'un ressortissant tchadien sont téressés et que de ce fait la juridiction tchadienne a été saisie, autorités militaires tchadiennes sont, à leur demande, associées x travaux de l'enquête.

s auteurs, co-auteurs, ou complices des infractions commises à térieur de ces bases et installations et qui ne sont pas membres forces armées françaises seront remis aux autorités de la République du Tchad dans le délai le plus court requis pour cette remise. ns ce cas, les autorités judiciaires tchadiennes pourront être ociées à l'exécution des mesures d'instruction auxquelles il sera océdé à leur requête à l'intérieur des bases et installations mili s françaises.

s forces armées françaises pourront, en liaison avec les auto és de la République du Tchad, utiliser à l'extérieur de leurs es et installations une police militaire dans la mesure nécessaire maintenir l'ordre et la discipline parmi les membres de ces ces.

rt. 3. — En cas d'infractions commises sur le territoire de la publique du Tchad contre les forces armées ou les installations, ns et matériels militaires français ou tchadiens les autorités la République française et les autorités de la République du ad s'engagent à prendre contre les personnes soumises à leur idiction respective les mesures équivalentes à celles qui seraient es si ces infractions avaient été commises à l'encontre de leurs pres forces armées, ou de leurs propres installations, biens et ériels militaires.

rt. 4. — Le Gouvernement de la République française versera indemnités équitables en cas de dommages survenus à l'occasion 'accomplissement du service des membres des forces armées çaises. Les demandes en indemnités seront transmises au Gouvernement de la République française à la diligence du Gouverne nt de la République du Tchad.

Gouvernement de la République du Tchad versera des indem s équitables en cas de dommages survenus à l'occasion de complissement de fonctions officielles par des personnes direc ent employées par lui. Les demandes en indemnités seront mises au Gouvernement de la République du Tchad à la dili ce du Gouvernement de la République française.

Sous réserve des dispositions du 1er alinéa du présent article, les tribunaux de la République du Tchad connaîtront des actions civiles dirigées contre les membres des forces armées françaises.

Dans ces affaires, les autorités militaires de la République Française prendront, à la demande des autorités militaires de la République du Tchad, toutes les mesures en leur pouvoir pour s'assurer du respect des jugements et ordonnances des tribunaux de la République du Tchad et pour aider les autorités de la République du Tchad à faire exécuter lesdits jugements et ordonnances. L'exécution de ces jugements et ordonnances ne pourra atteindre ni la personne, ni les armes, ni les munitions, ni l'équipement, ni les objets réglementaires, ni la tenue d'un membre des forces armées françaises.

Art. 5. — Les membres des forces armées françaises sont imposées par le Gouvernement français et ne sont pas assujettis aux impôts directs perçus pour le compte de la République du Tchad et de ses collectivités territoriales.

Le Gouvernement de la République française verse au Gouvernement de la République du Tchad une contrepartie fixée d'un commun accord, compte tenu de l'importance des effectifs des forces armées françaises et des dispositions de la législation fiscale de la République du Tchad.

Art. 6. — Les membres des forces armées françaises sont munis de carte d'identité ou de fiches d'identification dont les spécimens sont déposés auprès du Gouvernement de la République du Tchad.

Art. 7. — Le commandement militaire français peut, à l'usage exclusif des membres des forces armées françaises, disposer de services de soutien logistique, et notamment d'un service de poste aux armées et de paierie militaire. Un accord fixera les modalités de fonctionnement du service de poste aux armées.

Le commandement militaire français peut créer et entretenir des économats, des mess, des cercles, des foyers et des services sociaux. Ces établissements sont dispensés de licence et de taxes ou impôts sur la vente.

Les mesures nécessaires sont prises par les autorités françaises afin que les personnes n'ayant pas le droit de s'approvisionner auprès de ces établissements ne puissent se procurer les marchandises qu'ils mettent en vente.

Art. 8. — Les dispositions réglementaires concernant les marques extérieures de respect en vigueur dans l'armée de la République française et dans l'armée de la République du Tchad sont observées par les membres d'une de ces armées à l'égard des membres de l'autre et à l'égard des pavillons nationaux.

Art. 9. — Les dispositions du présent accord s'appliquent aux membres des forces armées françaises sur le territoire de la République du Tchad et aux personnels militaires français mis à la disposition de la République du Tchad.

Les personnes à charge des membres des forces armées françaises, telles qu'elles sont déterminées par la loi française, sont assimilées aux membres des forces armées françaises pour l'application des articles 5, 6 et 7 de la présente annexe. Toutefois, ces personnes ne bénéficient pas des dispositions de l'article 5 en tant qu'elles exercent sur le territoire de la République du Tchad des activités assujetties à l'impôt.

JEAN FOYER.

FRANÇOIS TOMBALBAYE.

ACCORD EN MATIERE D'AIDE

ENTRE LA RÉPUBLIQUE FRANÇAISE ET LA RÉPUBLIQUE DU TCHAD

Le Gouvernement de la République française, d'une part ;

Le Gouvernement de la République du Tchad, d'autre part,

Considérant que par l'effet de l'accord de transfert en date du 12 juillet 1960 entré en vigueur le 10 août 1960, la République du Tchad a accédé à l'indépendance et que la République française l'a reconnue en tant qu'Etat indépendant et souverain ;

Considérant que la République du Tchad manifeste la volonté de coopérer avec la République française au sein de la Communauté à laquelle elle participe dans les conditions prévues aux accords en date de ce jour,

Sont convenus de ce qui suit :

Art. 1er. — La République française, soucieuse de seconder les efforts de la République du Tchad pour son développement, lui apportera dans toute la mesure du possible l'aide qui lui est nécessaire pour atteindre les objectifs de progrès économique et social qu'elle s'est fixés.

Art. 2. — L'aide de la République française à la République du Tchad se manifestera notamment par la réalisation d'études, la fourniture d'équipements, l'envoi d'experts et de techniciens, la formation de cadres, l'octroi de concours financiers.

Art. 3. — Les modalités et les montants des aides ainsi consenties feront l'objet de conventions spéciales.

Art. 4. — Chacune des parties contractantes notifiera à l'autre l'accomplissement des procédures constitutionnellement requises pour la mise en vigueur du présent accord, qui prendra effet à la date de la dernière notification.

Fait à Fort-Lamy, le 11 août 1960.

Pour le Gouvernement de la République française :
JEAN FOYER.

Pour le Gouvernement de la République du Tchad :
FRANÇOIS TOMBALBAYE.

ACCORD EN MATIERE DOMANIALE

ENTRE LA RÉPUBLIQUE FRANÇAISE ET LA RÉPUBLIQUE DU TCHAD

Le Gouvernement de la République française, d'une part ;

Le Gouvernement de la République du Tchad, d'autre part,

Considérant que par l'effet de l'accord de transfert en date du 12 juillet 1960 entré en vigueur le 10 août 1960, la République du Tchad a accédé à l'indépendance et que la République française a reconnu son indépendance et sa souveraineté,

Sont convenus de ce qui suit :

Art. 1er. — Il est institué une commission mixte paritaire qui élaborera dans un délai de six mois à dater de l'entrée en vigueur du présent accord une convention en matière domaniale.

Art. 2. — La commission mixte établira la liste des immeubles acquis ou constitués sur crédits du budget de l'Etat français, dont la propriété sera reconnue à la République française. Elle déterminera éventuellement les compensations qui apparaîtront nécessaires à la satisfaction des besoins des parties en présence.

Art. 3. — La commission prévoiera l'affectation en jouissance à la République française de ceux des biens revenant à la République du Tchad qui resteraient nécessaires aux besoins des services de la République française sur le territoire de cet Etat.

Art. 4. — La commission établira la liste des organismes de droit public français jouissant de l'autonomie administrative ou financière dont les biens sont propriété privée.

Art. 5. — La République du Tchad déclare confirmer les concessions accordées antérieurement à la date à laquelle prend effet le présent accord sans préjudice des dispositions internes actuellement applicables.

Art. 6. — Dès l'entrée en vigueur du présent accord, le droit de concession en ce qui concerne les terrains immatriculés sera exercé par les autorités de la République du Tchad.

Art. 7. — Les dispositions du présent accord ne s'appliquent pas aux terrains et bâtiments affectés à la défense ; ceux-ci feront l'objet de conventions particulières.

Art. 8. — Chacune des parties contractantes notifiera à l'autre l'accomplissement des procédures constitutionnellement requises pour la mise en vigueur du présent accord qui prendra effet à la date de la dernière notification.

Fait à Fort-Lamy, le 11 août 1960.

Pour le Gouvernement de la République française :
JEAN FOYER.

Pour le Gouvernement de la République du Tchad :
FRANÇOIS TOMBALBAYE.

ACCORD DE COOPERATION CULTURELLE

ENTRE LA RÉPUBLIQUE FRANÇAISE ET LA RÉPUBLIQUE DU TCHAD

Le Gouvernement de la République française, d'une part ;
Le Gouvernement de la République du Tchad, d'autre part,

Considérant que la langue française, langue officielle de la République du Tchad et l'enseignement de caractère français sont devenus pour le peuple tchadien dans la fidélité à ses traditions, l'instrument de son développement culturel, politique, économique et social ;

Conscients des liens particuliers qui unissent les deux nations dans la Communauté et dans la famille morale et spirituelle des peuples d'expression française,

Sont convenus de ce qui suit :

TITRE Ier

De la coopération en matière d'enseignement.

Art. 1er. — Le Gouvernement de la République française facilitera sur le territoire de la République du Tchad et sur son propre territoire, l'éducation des ressortissants tchadiens désireux de suivre un enseignement de type français et d'acquérir les diplômes qui le sanctionnent.

Il prendra à cet effet toutes mesures utiles afin de mettre à la disposition du Gouvernement de la République du Tchad les personnels qualifiés qui lui seraient nécessaires en matière d'enseignement, de recherches, de culture, de jeunesse et de sports.

Des conventions particulières détermineront les devoirs, droits et garanties de ces personnels ainsi que les modalités de leur mise à la disposition du Gouvernement de la République du Tchad.

Art. 2. — Le Gouvernement de la République du Tchad :

S'adressera par priorité au Gouvernement de la République française pour le recrutement de ces personnels ;

Accordera toutes facilités dans l'accomplissement de leur mission à ces personnels ainsi qu'aux personnels des corps d'inspection et des jurys des examens et concours ;

Maintiendra dans les établissements d'enseignement des différents degrés, à l'intention des élèves désireux de suivre les programmes français, un enseignement conforme à ces programmes ;

Accordera éventuellement toutes facilités au Gouvernement de la République française pour ouvrir et entretenir sur le territoire de la République du Tchad, dans le respect des lois et des règlements relatifs à l'ordre public et aux bonnes mœurs, des établissements d'enseignement relevant de son autorité.

Art. 3. — Le contrôle pédagogique du personnel enseignant français en service sur le territoire de la République du Tchad sera assuré par les inspecteurs généraux de l'instruction publique placés en position de mission, et par l'inspecteur d'académie.

Des missions d'inspection générale seront organisées d'un commun accord entre le Gouvernement de la République française et le Gouvernement de la République du Tchad. Elles porteront de plein droit sur le personnel servant au titre de l'assistance technique. Elles pourront, à la demande du Gouvernement de la République du Tchad, porter sur les autres personnels.

L'inspecteur d'académie aura la responsabilité de l'organisation des examens et concours devant être sanctionnés par des diplômes français. Il les organisera dans les conditions fixées par la réglementation française sous réserve éventuellement d'adaptations définies d'un commun accord entre les deux Gouvernements. Il les sanctionnera sauf en ce qui concerne le diplôme du baccalauréat.

Art. 4. — Les grades, diplômes et titres universitaires français seront valables de plein droit sur le territoire de la République du Tchad.

Les grades, diplômes et titres universitaires délivrés sur le territoires de la République du Tchad dans les conditions fixées à l'article 3 ci-dessus seront valables de plein droit sur le territoire de la République française.

Les programmes d'études et de scolarité correspondant aux grades, diplômes et titres universitaires mentionnés à l'alinéa 2 ci-dessus feront, en tant que de besoin, l'objet d'adaptations décidées d'un commun accord entre les deux Gouvernements.

Les diplômes, brevets et titres de qualification éventuellement délivrés par les autorités compétentes de la République du Tchad dans des conditions autres que celles fixées à l'article 3 ci-dessus pourront être admis en équivalence avec les diplômes, brevets et titres français, après avis de la commission mixte prévue à l'article 8 ci-dessous.

Art. 5. — Les personnes physiques ou morales ressortissant de l'une des parties contractantes pourront ouvrir des établissements d'enseignement privé sur le territoire de l'autre partie dans les mêmes conditions que les ressortissants de celle-ci.

Les autorisations accordées aux établissements régulièrement ouverts à la date d'entrée en vigueur du présent accord sont confirmées.

TITRE II

Des échanges culturels.

Art. 6. — Les deux parties contractantes encourageront par tous les moyens à leur disposition les échanges culturels entre elles-mêmes et entre leurs ressortissants.

Ces moyens comprennent notamment :

Pour les échanges de personnels :

L'organisation de stages de formation ou de perfectionnement ;

L'exécution de missions de recherche scientifique et de fouilles archéologiques ;

La consultation d'archives et documents administratifs ;

L'organisation de manifestations artistiques, culturelles et sportives.

Pour les échanges de matériels :

L'admission en franchise et la libre circulation de tous les matériels éducatifs et culturels tels que livres, périodiques, journaux, disques éducatifs, photographies, vues fixes, films non commerciaux, ainsi que toutes mesures permettant d'assurer et d'accroître la coopération entre les deux Etats en matière de cinéma et de radiodiffusion-télévision ;

La création de bibliothèques, d'instituts et de centres culturels destinés à répandre la connaissance mutuelle de leurs cultures et de leurs civilisations.

TITRE III

Dispositions diverses.

Art. 7. — Les organismes universitaires et culturels de chacune des deux parties contractantes bénéficieront sur le territoire de l'autre partie du régime fiscal et parafiscal applicable aux organismes nationaux correspondants.

Art. 8. — Une commission mixte sera constituée pour l'application du présent accord. Elle comprendra trois délégués désignés par chacun des deux Gouvernements. La commission élira son président en son sein et se réunira au moins une fois par an, alternativement en France et au Tchad.

Des sous-commissions spécialisées pourront être constituées pour l'étude de questions particulières.

Art. 9. — Chacune des deux parties contractantes notifiera à l'autre l'accomplissement des procédures constitutionnellement requises pour la mise en vigueur du présent accord, qui prendra effet à la date de la dernière notification.

Fait à Fort-Lamy, le 11 août 1960.

Pour le Gouvernement de la République française :
JEAN FOYER.

Pour le Gouvernement de la République du Tchad :
FRANÇOIS TOMBALBAYE.

CONVENTION D'ETABLISSEMENT

ENTRE LA RÉPUBLIQUE FRANÇAISE ET LA RÉPUBLIQUE DU TCHAD

Le Gouvernement de la République française, d'une part,

Le Gouvernement de la République du Tchad, d'autre part,

Désireux d'assurer à leurs nationaux respectifs, outre les droits garantis par l'accord multilatéral sur les droits fondamentaux des nationaux des Etats de la Communauté, le bénéfice d'un statut inspiré de l'esprit qui anime leurs relations mutuelles, conforme à l'amitié qui unit leurs pays, et de nature à développer les rapports entre leurs peuples,

Sont convenus de ce qui suit :

Art. 1er. — Sans préjudice des conventions intervenues ou à intervenir entre les parties contractantes les nationaux de chacune de ces parties pourront accéder aux emplois publics de l'autre Etat dans les conditions déterminées par la législation de cet Etat.

Art. 2. — En ce qui concerne l'ouverture d'un fonds de commerce, la création d'une exploitation, d'un établissement à caractère industriel, commercial, agricole ou artisanal, l'exercice des activités correspondantes et l'exercice des activités professionnelles salariées, les nationaux de l'une des parties contractantes sont assimilés aux nationaux de l'autre partie contractante.

Art. 3. — Tout national de l'une des parties contractantes bénéficie, sur le territoire de l'autre partie, du traitement des nationaux de cette partie pour tout ce qui concerne l'accès aux professions libérales et leur exercice.

Toutefois, à titre exceptionnel et temporaire, l'accès sur le territoire d'une partie contractante à certaines professions libérales pourra être réservé en priorité aux nationaux de cette partie en vue de permettre leur promotion sociale.

Art. 4. — Tout national de l'une des parties contractantes a la faculté d'obtenir, sur le territoire de l'autre partie, des concessions, autorisations et permissions administratives, ainsi que de conclure des marchés publics dans les mêmes conditions que les nationaux de cette partie.

Art. 5. — Les nationaux d'une des parties contractantes seront, sur le territoire de l'autre partie, représentés dans les mêmes conditions que les nationaux de celle-ci aux assemblées consulaires et aux organismes assurant la représentation des intérêts économiques.

Art. 6. — Les nationaux de chacune des parties contractantes bénéficieront, sur le territoire de l'autre partie, de la législation du travail, des lois sociales et de sécurité sociale dans les mêmes conditions que les nationaux de cette partie.

Un accord technique précisera les conditions d'application de la disposition qui précède en ce qui concerne les prestations de sécurité sociale.

Les parties contractantes s'engagent à ne faire aucune discrimination entre leurs nationaux respectifs en ce qui concerne le bénéfice des services et établissements sociaux et sanitaires.

Art. 7. — Tout national de l'une des parties contractantes jouit, sur le territoire de l'autre partie contractante, des mêmes droits civils que les nationaux de ladite partie. Il les exerce selon la loi applicable d'après les règles de conflits de lois.

En particulier, le statut personnel des Français sur le territoire de la République du Tchad est régi par la loi française et le statut personnel des Tchadiens sur le territoire de la République française est régi par la loi tchadienne.

Art. 8. — Tout national de l'une des parties contractantes résidant sur le territoire de l'autre partie contractante peut participer aux activités syndicales et faire partie des organismes de défense professionnelle dans les mêmes conditions que les nationaux de cette partie.

La durée de la résidence exigée est déterminée par chaque Etat.

Art. 9. — Les nationaux de l'une des parties contractantes ne peuvent être assujettis sur le territoire de l'autre partie contractante à des droits, taxes ou contributions, quelle qu'en soit la dénomination, autres ou plus élevés que ceux perçus sur les nationaux de cette partie.

Les parties contractantes conviendront, en tant que de besoin, des mesures permettant de réprimer l'évasion fiscale et d'éviter les doubles impositions.

Art. 10. — Si l'une des parties contractantes se propose de prendre une mesure d'expulsion contre un national de l'autre partie contractante dont l'activité constitue une menace pour l'ordre public ou le crédit public, il en fait part à l'autre partie. Faute par celle-ci d'avoir présenté des observations dans un délai de vingt jours à dater de la réception de la communication, ou s'il est passé outre à ces observations, l'expulsion peut être prononcée. Elle a lieu en vertu d'une décision individuelle et motivée du chef du Gouvernement. Un délai suffisant est accordé à l'intéressé pour lui permettre de pourvoir aux mesures nécessitées par son départ.

Toutefois, en cas d'urgence absolue reconnue par décision motivée, une mesure d'expulsion assortie d'effet immédiat peut être prise. Cette mesure est immédiatement notifiée au Gouvernement de l'Etat dont relève la personne expulsée.

L'Etat qui procède à l'expulsion doit assurer par tous les moyens appropriés la sauvegarde des biens et des intérêts de la personne expulsée.

Art. 11. — Chacune des parties contractantes s'engage à respecter les droits acquis sur son territoire par les personnes physiques et morales ressortissants de l'autre partie.

Les Français établis sur le territoire de la république du Tchad et les Tchadiens établis sur le territoire de la République française à la date d'entrée en vigueur de la présente convention peuvent continuer à exercer librement leur profession dans les mêmes conditions que les nationaux de l'Etat de résidence.

De même, les sociétés ayant leur siège social sur le territoire de la République du Tchad au 1er janvier 1960, dont la majorité du capital appartient à des Français et dont plus de la moitié des administrateurs ou gérants sont de nationalité française, pourront, sur déclaration faite au registre du commerce, conserver leur statut actuel en ce qui concerne les règles régissant leur constitution, leur fonctionnement, leur liquidation et, d'une manière générale, les rapports entre associés ou actionnaires.

Art. 12. — Les sociétés civiles et commerciales constituées conformément à la législation d'une partie contractante et ayant leur siège social sur son territoire sont assimilées aux nationaux de cette partie contractante quant à la jouissance, sur le territoire de l'autre partie contractante, de tous les droits énoncés au présent accord et dont une personne morale peut être titulaire.

Le droit d'établissement des sociétés de transports maritimes et aériens fera l'objet d'accords spéciaux.

Art. 13. — La personnalité morale des associations à but non lucratif, légalement constituées sur le territoire de l'une des parties contractantes, est reconnue de plein droit par l'autre partie ntractants. Ces associations bénéficient notamment sur le territ… re de cette dernière des dispositions des alinéas 1 et 2 de rticle 4 de l'accord multilatéral sur les droits fondamentaux des tionaux des Etats de la Communauté, ainsi que de celles de linéa 1 de l'article 9 de la présente convention.

Art. 14. — Chacune des parties contractantes réserve aux natio… ux de l'autre, le statut particulier défini par la présente conven… n à raison du caractère spécifique des relations entre les deux ats. Le bénéfice de ces dispositions particulières ne peut pas être tomatiquement étendu aux ressortissants d'un Etat tiers.

Si l'une des parties contractantes vient à accorder aux ressor… sants d'un Etat tiers un statut plus favorable que celui défini r la présente convention, l'autre partie sera fondée à en revendi… er le bénéfice pour ses nationaux.

Art. 15. — Chacune des parties contractantes notifiera à l'autre ccomplissement des procédures constitutionnellement requises ur la mise en vigueur de la présente convention, qui prendra et à la date de la dernière notification.

Fait à Fort-Lamy, le 11 août 1960.

Pour le Gouvernement de la République française :

JEAN FOYER.

ur le Gouvernement de la République du Tchad :

FRANÇOIS TOMBALBAYE.

Echange de lettres relatives à la poursuite des activités
s établissements français sur le territoire de la République du Tchad.

Fort-Lamy, le 11 août 1960.

Le Premier ministre de la République française
à M. le Premier ministre de la République du Tchad.

Monsieur le Premier ministre,

Il est de l'intérêt de la République du Tchad et de la République ançaise que certains établissements publics de la République fran… se puissent poursuivre sur le territoire de la République du Tchad diverses activités afférentes à leur mission, en particulier dans domaines de la recherche et de l'aide et de la coopération.

J'ai en conséquence l'honneur de proposer que jusqu'à intervention entuelle de conventions spéciales les concernant, les établissements blics de la République française énumérés en annexe à la pré… nte lettre, continuent à exercer leurs activités sur le territoire de République du Tchad selon les modalités actuellement en vigueur.

Je serais heureux que vous veuillez me confirmer votre accord à sujet.

Je vous prie, monsieur le Premier ministre, d'agréer l'expression mes sentiments de très haute considération.

Par délégation du Premier ministre :

Le secrétaire d'Etat
aux relations avec les Etats de la Communauté,

JEAN FOYER.

Fort-Lamy, le 11 août 1960.

Le Premier ministre de la République du Tchad
à M. le Premier ministre de la République française.

Monsieur le Premier ministre,

Vous avez bien voulu m'adresser en date de ce jour la lettre sui… nte :

« Il est de l'intérêt de la République du Tchad et de la Répu… que française que certains établissements publics de la République ançaise puissent poursuivre sur le territoire de la République du Tchad les diverses activités afférentes à leur mission en particulier ns les domaines de la recherche et de l'aide et de la coopération.

« J'ai en conséquence l'honneur de proposer que jusqu'à inter… ntion éventuelle de conventions spéciales les concernant, les éta… ssements publics de la République française énumérés en annexe la présente lettre, continuent à exercer leurs activités sur le ter… toire de la République du Tchad selon les modalités actuellement vigueur. »

J'ai l'honneur de vous confirmer mon accord à ce sujet.

Je vous prie, monsieur le Premier ministre, d'agréer l'expression mes sentiments de très haute considération.

FRANÇOIS TOMBALBAYE.

ANNEXE

Le Premier ministre de la République française
à M. le Premier ministre de la République du Tchad.

Institut géographique national.

Mission métropolitaine des tabacs en Afrique équatoriale.

Bureau des recherches géologiques et minières.

Caisse centrale de coopération économique.

Centres relevant de l'Office de la recherche scientifique et technique pour l'outre-mer du Centre technique forestier tropical, et de l'Institut d'élevage et de médecine vétérinaire des pays tropicaux.

Mission d'Afrique centrale du commissariat à l'énergie atomique.

Echange de lettres relatives à l'association de la République du Tchad
à la Communauté économique européenne.

Fort-Lamy, le 11 août 1960.

Le Premier ministre de la République du Tchad
à M. le Premier ministre de la République française.

Monsieur le Premier ministre,

J'ai l'honneur de vous faire savoir que la République du Tchad, devenue Etat indépendant et souverain, désire continuer à bénéficier du statut d'Etat associé à la Communauté économique européenne, tel qu'il résulte des dispositions de la quatrième partie du traité de Rome et de la convention annexée à ce traité.

Le Gouvernement de la République du Tchad souhaiterait en conséquence que le Gouvernement de la République française notifiât cette volonté aux autorités compétentes de la Communauté économique européenne.

Je vous prie, monsieur le Premier ministre, d'agréer l'expression de mes sentiments de très haute considération.

FRANÇOIS TOMBALBAYE.

Le Premier ministre de la République française
à M. le Premier ministre de la République du Tchad.

Monsieur le Premier ministre,

Par lettre en date de ce jour vous avez bien voulu me faire savoir ce qui suit :

« J'ai l'honneur de vous faire savoir que la République du Tchad, devenue Etat indépendant et souverain, désire continuer à bénéficier du statut d'Etat associé à la Communauté économique européenne, tel qu'il résulte des dispositions de la quatrième partie du traité de Rome et de la convention annexée à ce traité.

« Le Gouvernement de la République du Tchad souhaiterait, en conséquence, que le Gouvernement de la République française notifiât cette volonté aux autorités compétentes de la Communauté économique européenne. »

J'ai l'honneur de vous faire connaître que je prends acte de la volonté ainsi exprimée par la République du Tchad ; il en sera fait part aux autorités compétentes de la Communauté économique européenne.

Je vous prie, monsieur le Premier ministre, d'agréer l'expression de mes sentiments de très haute considération.

Par délégation du Premier ministre :

Le secrétaire d'Etat,
aux relations avec les Etats de la Communauté,

JEAN FOYER.

Annex 32

ACCORD DE BON VOISINAGE ET D'AMITIÉ ENTRE LA RÉPUBLIQUE DU TCHAD ET LE ROYAUME-UNI DE LIBYE, 2 MARS 1966

Journal officiel de la République du Tchad, avril 1966, p. 389. Translation. Arabic text.

ACCORD

De bon voisinage et d'amitié entre
la République du Tchad et le Royaume-Uni de Libye

Gouvernement du Royaume-Uni de Libye, d'une

Et

Gouvernement de la République du Tchad, d'autre

ireux de réglementer et de consolider les rapports de voisinage et d'amitié entre leurs pays,

Sont convenus de ce qui suit :

rt. 1er. — Sur la frontière séparant le territoire du Ro me-Uni de Libye de celui de la République du Tchad, Gouvernements Libyen et Tchadien prendront toutes res en vue d'assurer le maintien de l'ordre et de la par une liaison et une coopération de leurs services curité.

Il est bien entendu que les dispositions ci-dessus aient porter atteinte au droit d'asile tel qu'il est conformément aux usages internationaux.

t. 2. — Le Gouvernement Lybien et le Gouvernement dien s'engagent à accorder des facilités de circulation populations installées de part et d'autre de la frontière intérieur des zones géographiques délimitées par ci-dessous :

ce qui concerne le Royaume-Uni de Libye :

ouira, Gatroum, Mourzouk, Oubari, Ghat.

ce qui concerne la République du Tchad :

Largeau, Fada.

3. — Le trafic commercial et caravanier entre pays, même de type traditionnel devra utiliser et pistes légales ci-dessous désignées :

Zouar, Bardai, Aozou, Koufra (et vice versa)

Largeau, Zouar, Wour, Koriza, Gatroum (et

Largeau, Ounianga, Tekro Koufra (et vice v

Fada, Ounianga, Koufra (et vice versa).

4. — Des cartes de circulation frontalière sur leur demande aux populations relevant administratives incluses dans les zones frontal à l'article 2 du présent accord sur présentation pièce d'identité laquelle accompagnera la carte ion frontalière.

5. — Ces cartes de circulation seront valables p riode maximum de trois mois.

seront individuelles et conformes au spécimen p

seront rédigées en français et en arabe.

pouses et les enfants de moins de seize ans qui chef de famille peuvent figurer sur la même carte de circulation.

de ces cartes est strictement limitée aux zones définies à l'article 2 ci-dessus ; hors de sseports deviennent obligatoires.

Art. 6. — Les personnes titulaires d'une carte de circulation frontalière doivent se soumettre aux lois et règlements qui sont en vigueur dans le pays où elles se trouvent et en particulier à ceux qui ont trait à l'ordre et à la sécurité publique.

Art. 7. — Les autorités frontalières Lybiennes et Tchadiennes prendront toutes les mesures propres à prévenir les crimes et délits, à réprimer la contrebande et à poursuivre les délinquants.

Art. 8. — Les différends auxquels pourra donner lieu l'application du présent accord seront soumis à des commissions mixtes ad-hoc qui se réuniront à des dates à fixer d'un commun accord, alternativement en zone frontalière Libyenne et en zone frontalière Tchadienne.

Ces commissions sont composées d'un nombre égal de représentants pour chacune des deux parties.

Leurs décisions seront exécutoires si, dans un délai de deux mois, les autorités administratives de l'une ou de l'autre partie n'ont pas fait connaître leur opposition.

Art. 9. — En attendant la ratification suivant les formes constitutionnelles propres à chacun des pays, les deux parties contractantes conviennent de la mise en vigueur provisoire du présent accord à la date de sa signature.

Chacune des parties contractantes pourra, à tout moment, notifier à l'autre partie son intention de mettre fin à cet accord.

Dans ce cas, le présent accord prend fin après un an de préavis. Il pourra être révisé d'un commun accord.

Fait à Tripoli, le 2 mars 1966.

En double exemplaire, en langues française et arabe, les deux textes faisant également foi.

Pour le Gouvernement
de la République du Tchad

Le ministre de l'économie
et des transports,

ABDOULAYE LAMANA.

Pour le Gouvernement
du Royaume-Uni de Libye

Le ministre de l'économie
et du commerce,

AHMED SOUEIDI.

TRANSLATION

Resolution by the Council of Ministers ratifying the Treaty of Friendship and Neighbourly Relations concluded between the Kingdom of Libya and the Republic of Chad

The Council of Ministers,

Having examined Article 84 of the Constitution, and as submitted by the Foreign Minister,

Has resolved the following:-

Art. 1

The Treaty of Friendship and Neighbourly Relations concluded between the Kingdom of Libya and the Republic of Chad, attached to this Resolution and signed in the city of Tripoli on 2 March 1966, is ratified.

Art. 2

The Foreign and Interior Ministers are to implement this Resolution, which is to be published in the Official Gazette.

Given at Al-Baidha on 8 Ramadhan 1387 AH
9 December 1967

Abdul Hamid Al-Bakoush
Prime Minister

Treaty of Friendship and Neighbourly relations between the Government of the Kingdom of Libya and the Government of the Republic of Chad

The Government of the Kingdom of Libya and the Government of the Republic of Chad, desiring to regulate and strengthen their friendship and neighbourly relations, have come to agreement on the following:-

Art. 1

The Government of the Kingdom of Libya and the Government of the Republic of Chad undertake to take all necessary measures to ensure the maintenance of order and security along the frontier between their two countries through contact and cooperation between their respective security authorities, such measures not to affect the right of asylum as recognised in international practice.

Art. 2

The Government of the Kingdom of Libya and the Government of the Republic of Chad undertake to facilitate the movement of people living on both sides of the frontier between the two countries within the geographical area bounded by the following points:-

Within Libyan territory:

Kafra - Qatroun - Marzaq - Oubari - Ghalt

Within Chadian territory:

Zawar - Largo - Fada.

Art. 3

Traders and convoys including traditional caravans shall, in their movement between the two countries, keep to the following lawful routes and corridors:-

1) The Zawar - Bardar - Ouzou - Kafra route and vice versa

2) The Largo - Zawar - Wor Kourizou - Qatroun route and vice versa

3) The Fada - Ounyanga - Kafra route and vice versa.

Art. 4

At the request of individuals, frontier permits shall be granted by the relevant administrative authorities for the frontier areas given in Article 2 of the present Agreement, personal identity documents having been shown. Permits shall not be acceptable unless accompanied by personal identity documents.

Art. 5

Traffic permits shall be written in Arabic and French according to the specimen attached. They shall be valid for a maximum of three months and shall be personal. Wives and children under sixteen years of age accompanied by the head of household holding the permit shall be exempted from carrying such a permit but their names are to be entered therein.

The validity of the permit shall be restricted to the geographical area specified in Article 2 of the present Agreement, otherwise every traveller must carry a valid passport according to the laws and regulations in force in each contracting State.

Art. 6

Holders of frontier permits must mandatorily observe and respect the laws and regulations in force in the country in which they are, particularly those which concern public order and security.

Art. 7

The Libyan and Chadian frontier authorities shall take all necessary measures to avoid the occurence of offences, to prevent smuggling and to pursue offenders.

Art. 8

Temporary joint committees shall be formed to investigate disputes which may arise through the implementation of the wording of the present Agreement, and such committees are to consist of an equal number of members of each contracting party. They are to meet at such place and time as the parties may agree, and their decisions shall be binding unless objections are raised by the competent authorities in either region within two months of the date of issue.

Art. 9

The present Agreement shall enter provisionally into force from the date of signing and shall enter finally into force when ratified under the constitutional procedures of each contracting party.

It shall remain in force unless one party shall notify the other in writing of its wish to terminate, in which case the Agreement shall terminate one year from the date of such notice. It may also be amended by agreement between the two parties.

This Agreement has been made on Wednesday 2 March one thousand nine hundred and sixty six in the city of Tripoli in duplicate in Arabic and French, each copy having equal force.

for the Government of the Kingdom of Libya	for the Government of the Republic of Chad
Ahmed Al-Suwaidaq Minister for Economiy & Trade	Abdullah Lamana Minister for Economy & Transport

Annex

Specimen of Frontier Permit

Name and surname of holder
Date and place of birth
Father's name
Mother's name
Tribe
Clan
Profession
Domicile
Purpose of travel
Goods conveyed
Validity
Date of issue
Accompanied by

Signature and Stamp

قرار مجلس الوزراء
بالموافقة على اتفاقية الصداقة وحسن الجوار
المعقودة بين المملكة الليبية وجمهورية تشاد

مجلس الوزراء ،

بعد الاطلاع على المادة ٨٤ من الدستور ،
وبناء على ماعرضه وزير الخارجية ،

قرر

مادة (١)

ووفق على اتفاقية الصداقة وحسن الجوار المعقودة بين المملكة الليبية وجمهورية تشاد المرافقة لهذا القرار والموقع عليها فى مدينة طرابلس يوم ٢ مارس سنة ١٩٦٦ .

مادة (٢)

على وزيرى الخارجية والداخلية تنفيذ هذا القرار وينشر فى الجريدة الرسمية .

صادر بمدينة البيضاء فى ٨ رمضان ١٣٨٧
الموافق ٩ ديسمبر ١٩٦٧

عبد الحميد البكوش
رئيس مجلس الوزراء

اتفاقية صداقة وحسن جوار بين .
حكومة المملكة الليبية و حكومة جمهورية تشاد

ان حكومة المملكة الليبية وحكومة جمهورية تشاد رغبة منهما فى تنظيم وتدعيم علاقات الصداقة وحسن الجوار قد اتفقتا على ما يلى : —

مادة (١)

تتعهد حكومة المملكة الليبية وحكومة جمهورية تشاد باتخاذ كافة الترتيبات اللازمة لضمان المحافظة على النظام والأمن على الحدود الفاصلة بين بلديهما بواسطة اتصال وتعاون سلطات الأمن فيهما على أن لاتؤثر هذه الترتيبات فى حق اللجوء المعترف به وفقاً لقواعد العرف الدولى .

مادة (٢)

تتعهد حكومة المملكة الليبية وحكومة جمهورية تشاد بتسهيل تنقل السكان القاطنين على جانبي الحدود الفاصلة بين البلدين داخل المنطقة الجغرافية المحددة بالمواقع التالية : —

في اراضى المملكة الليبية :—

الكفرة — القطرون — مرزق — أوبارى — غلت .

فى اراضى الجمهورية التشادية :—

زوار — لارجو — فادا .

مادة (٣)

يلتزم التجار والقوافل بما فيها التقليدية فى التنقل بين البلدين الطرق والممرات القانونية الآتية : —

١) طريق زوار — بردار — أوزو — الكفرة وبالعكس
٢) طريق لارجو — زوار — وور كوريزو — القطرون وبالعكس
٣) طريق فادا — أونيانجا — الكفرة وبالعكس .

مادة (٤)

تمنح تصاريح الحدود بناء على طلب الأفراد من قبل السلطات الادارية التابعين لها على مناطق الحدود المبينة فى المادة ٢ من هذه الاتفاقية وذلك بعد ابراز بطاقات تعريف شخصية ولاتكون التصاريح مقبولة الا اذا كانت مصحوبة ببطاقات التعريف الشخصية .

مادة (٥)

تحرر تصاريح المرور باللغتين العربية والفرنسية وفقاً للنموذج المرفق .

وتكون صلاحيتها لمدة أقصاها ثلاثة أشهر وهى شخصية . ويعفى من حملها الزوجات والأطفال دون السادسة عشرة المرافقين لرب الأسرة حامل التصريح على أن تدرج اسماؤهم فيه .

كما تقتصر صلاحية التصريح على المنطقة الجغرافية المحددة فى المادة ٢ من هذه الاتفاقية وفيما عداها يستوجب على كل مسافر حمل جواز سفر صالح وفقاً للقوانين واللوائح المعمول بها فى كل من البلدين المتعاقدين .

مادة (٦)

يتحتم على الاشخاص الحاملين على تصاريح الحدود مراعاة واحترام القوانين واللوائح المعمول بها فى البلد الموجودين فيه وبصفة خاصة مايتعلق منها بالنظام والأمن العام .

مادة (٧)

تتخذ سلطات الحدود الليبية والتشادية جميع التدابير اللازمة لتفادى وقوع الجرائم ومنع التهريب ومتابعة المخالفين .

مادة (٨)

تشكل لجان مشتركة مؤقته للنظر فى الخلافات التى قد يؤدى اليها تنفيذ نصوص هذه الاتفاقية تتكون من عدد متساو من الأعضاء من كلا الطرفين

المتعاقدين وتجتمع فى المكان والزمان الذى يتفق عليه الطرفان وتكون قراراتها نافذة ما لم تعترض عليها السلطات المختصة فى احدى المنطقتين خلال مدة شهرين من تاريخ صدورها .

مادة (٩)

يبدأ تنفيذ هذه الاتفاقية بصفة مؤقته اعتبارا من تاريخ توقيعها وتصبح سارية المفعول بصفة نهائية بعد اتمام التصديق عليها وفقاً للاجراءات الدستورية فى كلا البلدين المتعاقدين .

ويستمر سريانها ما لم يخطر احد الطرفين الطرف الآخر كتابياً برغبته فى الأنهاء وفى هذه الحالة ينتهى مفعول الاتفاقية بعد سنة من تاريخ هذا الاخطار كما يجوز تعديلها باتفاق الطرفين .

عقدت هذه الاتفاقية بمدينة طرابلس الغرب يوم الاربعاء الموافق اثنين مارس سنة الف وتسعمائة وست وستين فى نسختين اصليتين باللغتين العربية والفرنسية وكلاهما متساو فى القوة .

عن حكومة المملكة الليبية
أحمد الصويدق
وزير الاقتصاد والتجارة

عن حكومة جمهورية تشاد
عبد الله لامانه
وزير الاقتصاد والنقل

ANNEXE ملحـق

نموذج تصريح مرور
SPECIMEN DE CARTE
DE CIRCULATION FRONTALIERE

Nom et prenoms du titulaire	الاسم واللقب
Date et lieu de nissance	تاريخ ومكان الولادة
Fils de	اسم الاب
Et de	اسم الام
Tribu	القبيلة
Fraction	العائلة
Profession	المهنة
Domicile	محل الاقامة
Motif du Voyage	الغرض من السفر
Marchandises transportees	البضاعة المنقولة
Validite	مدة الصلاحية
Date de delivrance	تاريخ الاصدار
Accompage de	المرافقون

Signature et cachet التوقيع والختم

Annex 33

AGREEMENT ON COMMERCIAL EXCHANGE CONCLUDED BETWEEN THE KINGDOM OF LIBYA AND THE REPUBLIC OF CHAD, 2 MARCH 1966

Libyan People's Bureau for Foreign Liaison. Translation. Arabic text.

TRANSLATION

Resolution of the Council of Ministers ratifying the Agreement on Commercial Exchange concluded between the Kingdom of Libya and the Republic of Chad

The Council of Ministers,

Having examined Article 84 of the Constitution, and

As submitted by the Foreign Minister,

Has resolved the following:-

Art. 1

The Agreement on Commercial Exchange concluded between the Kingdom of Libya and the Republic of Chad, attached to this Resolution and signed in the city of Tripoli on 2 March 1966, is ratified.

Art. 2

The Foreign Minister and Minister for Trade and Economy are to implement this Resolution, and it is to be published in the Official Gazette.

Given in Al-Baidha on 8 Ramadhan 1387AH (9 December 1967)

Abdul Hamid Al-Bakoush
Prime Minister

Agreement on Commercial Exchange between the Government of the Kingdom of Libya and the Government of the Republic of Chad

The Government of the Kingdom of Libya of the one part and the Government of the Republic of Chad of the other part, desiring to develop economic relations and to regulate commercial exchange between them, have come to agreement on the following:-

Art. 1

The two Governments undertake to increase and encourage the export potential and exchange of supplies between them by all available means.

Art. 2

The two contracting parties agree that the goods shown in the two lists attached to the present Agreement shall form the basis for commercial exchange between the two countries, although these lists shall not inhibit dealings by agreement between the parties in other goods not so listed.

List A represents goods of Libyan origin that may be exported to Chad.

List B represents goods of Chadian origin that may be exported to Libya.

Art. 3

In the present Agreement natural goods extracted from the soil or grown in Libya and goods manufactured in Libya shall be regarded as Libyan.

In the present Agreement natural goods extracted from the soil or grown in Chad and goods manufactured in Chad shall be regarded as Chadian.

The origin of goods produced in either contracting country using materials grown or extracted from the soil or manufactured in another country shall be determined according to the rules and regulations in force in each contracting country.

Art. 4

The two contracting parties undertake to grant the necessary mutual facilities for the export and provision of the goods mentioned in the two lists referred to in Article 2 of the present Agreement, and they furthermore undertake to grant import and export licences according to the rules and regulations in force in each contracting country.

Art. 5

The two contracting parties agree to give each other most favoured nation treatment in their commercial relations. This shall not apply to:-

> The privileges that either party shall have granted to other parties prior to the conclusion of the present Agreement;
>
> The privileges arising or that may arise through the association of either party in a customs union or free exchange agreement.

Art. 6

The two contracting parties agree to establish commercial centres and permanent or temporary exhibitions in the country of the other, and also to exchange the necessary facilities for the establishment of such centres and exhibitions within the rules and regulations in force in the two contracting countries.

Art. 7

Payments resulting from the commercial exchanges which are the subject of the present Agreement shall be made according to the currency and foreign trade regulations in force in each contracting country.

Art. 8

A joint committee shall be formed, composed of representatives of the signatory Governments to the present Agreement, which shall meet at the request of either contracting party to examine ways to surmount difficulties that may arise through the implementation of the provisions of the present Agreement. The committee shall be empowered to submit proposals to the Governments of the two contracting countries for the development of commercial relations between the two countries.

Art. 9

The present Agreement shall run for one year with automatic renewal annually unless either contracting party expresses its wish in writing to terminate it, doing so within three months of the date or termination of its validity. Its provisions may also be amended by agreement between the two contracting parties.

Art. 10

The provisions of the present Agreement shall enter provisionally into force from its date of signing, and shall become finally effective after exchange of ratifications according to the constitutional procedures in each contracting country.

The present Agreement had been made in duplicate in Arabic and French in the city of Tripoli on 2 March one thousand nine hundred and sixty six, each version having equal force.

for the Government of the Kingdom of Libya	for the Government of the Republic of Chad
Ahmed Al-Suwaidaq Minister for Economy & Trade	Abdullah Lamana Minister for Economy & Transport

List A

Goods of Libyan origin:-

1) Tobacco
2) Cigarettes
3) Fruit
4) Canned fruit
5) Olives
6) Olive oil
7) Mineral water
8) Carbonated beverages
9) Wine
10) Salt
11) Macaroni
12) Canned tomatoes
13) Canned fish (sardines - tuna)
14) Fresh fish
15) Textiles
16) Petroleum products
17) Confectionery and soft drinks
18) Cement
19) Gypsum

List B

Goods of Chadian origin:-

1) Fresh meat
2) Animals
3) Raw hides. Processed hides
5) River fish
6) Butter
7) Cotton
8) Cacao for oil extraction
9) Gum arabic

قرار مجلس الوزراء
بالموافقة على اتفاقية التبادل التجارى
المعقودة بين المملكة الليبية وجمهورية تشاد

مجلس الوزراء ،

بعد الاطلاع على المادة ٨٤ من الدستور ،
وبناء على ما عرضه وزير الخارجية ،

قــــرر

مادة (١)

ووفق على اتفاقية التبادل التجارى المعقودة بين المملكة الليبية وجمهورية تشاد المرافقة لهذا القرار والموقع عليها فى مدينة طرابلس يوم ٢ مارس سنة ١٩٦٦ .

مادة (٢)

على وزيرى الخارجية والتجارة والاقتصاد تنفيذ هذا القرار وينشر فى الجريدة الرسمية .

صدر بمدينة البيضاء فى ٨ رمضان ١٣٨٧
الموافق ٩ ديسمبر ١٩٦٧

عبد الحميد البكوش
رئيس مجلس الوزراء

اتفاقية تبادل تجارى بين
حكومة المملكة الليبية و حكومة جمهورية تشاد

ان حكومة المملكة الليبية من جهة وحكومة جمهورية تشاد من جهة أخرى رغبة منهما فى تطوير العلاقات الاقتصادية وتنظيم التبادل التجارى بينهما قد اتفقتا على مايلى : —

مادة (١)

تتعهد الحكومتان بزيادة وتشجيع امكانيات التصدير والتوريد المتبادل بينهما وذلك بشتى الوسائل الخاصة بذلك .

مادة (٢)

يوافق الطرفان المتعاقدان على أن تكون البضائع الواردة فى القائمتين المرفقتين بهذه الاتفاقية أساس التبادل التجارى بين البلدين . على أن لاتحول هاتان القائمتان دون التعامل فى بضائع أخرى لم ترد فيهما وذلك باتفاق الطرفين .

وتمثل القائمة (أ) البضائع الليبية الاصل التى يمكن تصديرها الى تشاد .

وتمثل القائمة (ب) البضائع التشادية الاصل التى يمكن تصديرها الى ليبيا .

مادة (٣)

وتعتبر ليبية فى هذا الاتفاق تلك البضائع الطبيعية المستخرجة من التربة أو المزروعة فى ليبيا كذلك البضائع المصنوعة فى ليبيا .

كما تعتبر تشادية فى هذا الاتفاق تلك البضائع الطبيعية المستخرجة من التربة او المزروعة فى تشاد كذلك البضائع المصنوعة فى تشاد .

ويحدد أصل البضائع المنتجة فى احدى البلدين المتعاقدين باستعمال

مواد مزروعة أو مستخرجة من الارض أو مصنوعة فى بلد آخر وفقاً للقوانين واللوائح المعمول بها فى كل من البلدين المتعاقدين .

مادة (٤)

يتعهد الطرفان المتعاقدان على تبادل منح التسهيلات اللازمة لتصدير وتوريد البضائع المذكورة فى القائمتين المشار اليهما فى المادة الثانية من هذه الاتفاقية . كما يتعهد الجانبان المتعاقدان على منح تراخيص الاستيراد والتصدير وفقاً للقوانين واللوائح المعمول بها فى كل من البلدين المتعاقدين .

مادة (٥)

يوافق الطرفان المتعاقدان على معاملة كل منهما للآخر معاملة الدولة الأكثر رعاية فى علاقتهما التجارية . ولاينطبق ذلك على : —

أ — المزايا التى قد يكون أحد الطرفين منحها لاطراف أخرى قبل عقد هذه الاتفاقية .

ب — المزايا الناشئة أو التى قد تنشأ من ارتباط أحد الطرفين باتحاد جمركى أو اتفاق تبادل حر .

مادة (٦)

يوافق الطرفان المتعاقدان على اقامة مراكز تجارية ومعارض دائمة أو مؤقته فى بلد الطرف الآخر كما يوافق الطرفان المتعاقدان على تبادل التسهيلات اللازمة لاقامة هذه المراكز والمعارض فى حدود القوانين واللوائح المعمول بها فى البلدين المتعاقدين .

مادة (٧)

تتم المدفوعات الناتجة عن المبادلات التجارية موضوع هذه الاتفاقية وفقاً لقوانين العملة والتجارة الخارجية المعمول بها فى كل من البلدين المتعاقدين .

مادة (٨)

تشكل لجنة مشتركة مكونة من ممثلين عن الحكومتين الموقعتين على هذه الاتفاقية تجتمع بناء على طلب أحد الطرفين المتعاقدين للنظر فى تذليل الصعوبات التى قد تنشأ عن تنفيذ أحكام هذه الاتفاقية ، واللجنة مخولة بتقديم المقترحات التى من شأنها المساهمة فى تطوير العلاقات التجارية بين البلدين الى حكومتى البلدين المتعاقدين .

مادة (٩)

يسرى مفعول هذه الاتفاقية لمدة سنة واحدة تتجدد تلقائياً سنة بعد أخرى ما لم يبد أحد الطرفين المتعاقدين رغبته كتابياً فى انهائها وذلك قبل ثلاثة أشهر من تاريخ انتهاء مدة سريانها . كما يجوز تعديل احكامها باتفاق الطرفين المتعاقدين .

مادة (١٠)

يبدأ فى تنفيذ أحكام هذه الاتفاقية بصفة مؤقته من تاريخ التوقيع عليها وتصبح سارية المفعول بصفة نهائية بعد تبادل وثائق التصديق عليها وفقاً الاجراءات الدستورية فى كل من البلدين المتعاقدين .

عقدت هذه الاتفاقية بمدينة طرابلس الغرب يوم أثنين مارس سنة الف وتسعمائة وست وستين فى نسختين اصليتين باللغتين العربية والفرنسية وكلاهما متساو فى القوة .

عن حكومة المملكة الليبية
أحمد الصويدق
وزير الاقتصاد والتجارة

عن حكومة جمهورية تشاد
عبد الله لامانه
وزير الاقتصاد والنقل

القائمة (أ)

بضائع من أصل ليبي :-

١ – تبغ
٢ – سجائر
٣ – فواكه
٤ – فواكه معلبة
٥ – زيتون
٦ – زيت زيتون
٧ – مياه معدنية
٨ – مشروبات غازية
٩ – نبيذ
١٠ – ملح
١١ – مكرونة
١٢ – طماطم معلبة
١٣ – اسماك معلبة (سردينة – تن)
١٤ – اسماك طازجة
١٥ – منسوجات
١٦ – منتوجات بترولية
١٧ – حلويات ومرطبات
١٨ – اسمنت
١٩ – جبس

القائمة (ب)

بضائع من أصل تشادى :--

١ - لحوم طازجة
٢ - حيوانات
٣ - جلود خام . جلود مصنوعة
٤ - سمك نهرى
٥ - عطور
٦ - زبدة
٧ - قطن
٨ - كاكاوية لاستخراج الزيت
٩ - صمغ عربى

Annex 34

AGREEMENT ON FRIENDSHIP AND COOPERATION CONCLUDED BETWEEN THE ARAB REPUBLIC OF LIBYA AND THE REPUBLIC OF CHAD, 23 DECEMBER 1972

Libyan People's Bureau for Foreign Liaison. Translation. Arabic text.

TRANSLATION

No. 16 Page 833

Resolution of the Revolution Command Council ratifying the Agreement on Friendship and Cooperation between the Arab Republic of Libya and the Republic of Chad

In the name of the People,

The Revolution Command Council,

Having examined the constitutional decree promulgated on 2 Shawwal 1389AH (11 December 1969), and

As submitted by the Foreign Minister and with the approval of the Council of Ministers,

Has resolved the following:-

Art. 1

The Agreement on Friendship and Cooperation concluded between the Arab Republic of Libya and the Republic of Chad, signed in the city of Tripoli on 18 Dhul Qaada 1392AH (23 December 1972), is ratified.

Art. 2

The Foreign Minister is to implement this Resolution, and it is to be published in the Official Gazette.

Revolution Command Council

Major Abdul Salaam Ahmed Jaloud
Prime Minister

Mansour Rashid Al-Kikhia
Foreign Minister

Promulgated on 3 Safar 1393AH (8 March 1973)

No. 16 Pages 834-836

Agreement on Friendship and Cooperation
between
The Arab Republic of Libya and the Republic of Chad

The Government of the Arab Republic of Libya, represented by the Chairman of the Revolution Command Council, Colonel Muammar Al-Qaddhafi, and
The Government of the Republic of Chad, represented by President François Tombalbay,

Desiring to continue and strengthen the traditional relations that link the two peoples, intent on furthering peace and confidence between the two countries, and satisfied that the strengthning of political, economic, financial, social and cultural relations between them will serve the interests and aspirations of their peoples, and

In concern for the special relations that bind the two neighbouring countries, and pursuant to the objectives and charter of the Organisation of African Unity and the United Nations Organisation to create good relations and neighbourliness between member States and to assist in the liberation of those peoples who still suffer under the yoke of colonialism, and

Desiring to preserve the peace and security of both States,

Have come to agreement on the following:-

Art. 1

In their mutual relations the two contracting parties undertake to respect the principles and objectives of the Organisation of African Unity and the United Nations Organisation.

Art. 2

The two contracting parties shall work towards strengthening their fraternal relations, and confirm that neither shall join an alliance or convention against the interests of the other.

Art. 3

The two contracting parties agree to encourage and develop cooperation between them in the economic, financial, commercial, technical, cultural, social, educational and scientific fields and in any other field aimed at strengthening friendly and cooperative relations between the two countries. The two parties shall conclude agreements regulating the aspects of cooperation between them in the various fields.

Art. 4

The two contracting parties agree to form a joint committee with the task of supervising implementation of the contents of the present Agreement. This committee shall meet at least once a year alternately in Libya and Chad.

Art. 5

The two contracting parties agree to cooperate and coordinate their attitudes and activities in the field of international relations so as to accord with the principles and objectives of the Organisation of African Unity and the United Nations Organisation.

Art. 6

The two contracting parties undertake to make every effort to avoid disputes that may arise between the two countries, doing so by direct communications and mutual consultations between themselves. They shall work towards the peaceful resolution of any problems that may arise between them, so as to accord with the spirit of the charter of the Organisation of African Unity and the United Nations Organisation.

Art. 7

The present Agreement shall enter into force from the date of exchange of ratifications according to the constitutional procedures of each country, such ratifications being exchanged within two months of the date of signing.

Art. 8

The present Agreement shall run for an unlimited period. It may be terminated by either party by notice in writing to the other party six months prior to termination.

Done in duplicate in Arabic and French in the city of Tripoli on 18 Dhul Qaada 1392AH (23 December 1972), each text having equal force.

Colonel Muammar Al-Qaddhafi for the Government of the Arab Republic of Libya	President François Tombalbay for the Government of the Republic of Chad

قرار من مجلس قيادة الثورة
بالتصديق على اتفاق الصداقة والتعاون بين
الجمهورية العربية الليبية وجمهورية تشاد

باسم الشعب .

مجلس قيادة الثورة .

بعد الاطلاع على الاعلان الدستورى الصادر فى ٢ شوال ١٣٨٩هـ الموافق ١١ ديسمبر ١٩٦٩م .

وبناء على ما عرضه وزير الخارجية وموافقة رأى مجلس الوزراء .

قرر :

مادة (١)

يصدق على اتفاق الصداقة والتعاون المبرم بين الجمهورية العربية الليبية وجمهورية تشاد والموقع عليه بمدينة طرابلس بتاريخ ١٨ ذى القعدة ١٣٩٢هـ الموافق ٢٣ ديسمبر ١٩٧٢م .

مادة (٢)

على وزير الخارجية تنفيذ هذا القرار ، وينشر فى الجريدة الرسمية .

مجلس قيادة الثورة

الرائد / عبد السلام أحمد جلود
رئيس مجلس الوزراء

منصور رشيد الكيخيا
وزير الخارجية

صدر فى ٣ صفر ١٣٩٣هـ
الموافق ٨ مارس ١٩٧٣م

العدد ١٦ صفحة ٨٣٤

اتفاق صداقة وتعاون
بين الجمهورية العربية الليبية وجمهورية تشاد

ان حكومة الجمهورية العربية الليبية . ويمثلها رئيس مجلس قيادة الثورة العقيد / معمر القذافى .

وحكومة جمهورية تشاد ويمثلها الرئيس فرانسوا تمبلباى .

رغبة منهما فى استمرار وتقوية العلاقات التقليدية التى تربط بين الشعبين

وتصميماً على تدعيم السلام والثقة بين البلدين واقتناعاً بأن تقوية العلاقات السياسية والاقتصادية والمالية والاجتماعية والثقافية بينهما . من شأنه أن يخدم مصالح وتطلعات شعبيهما .

واهتماماً منهما بالعلاقات الخاصة التى تربط بين البلدين المتجاورين .

وتطبيقاً لاهداف وميثاق منظمة الوحدة الافريقية ومنظمة الامم المتحدة بشأن ايجاد علاقات طيبة . وصلات جوار حسنة بين الدول الاعضاء والمساعدة فى تحرير الشعوب التى لا زالت ترزح تحت نير الاستعمار .

ورغبة فى المحافظة على السلام والامن الدوليين .

اتفق الطرفان على ما يلى :—

المادة الاولى

يتعهد الطرفان المتعاقدان فى علاقاتهما المتبادلة باحترام مبادىء واهداف منظمة الوحدة الافريقية ومنظمة الامم المتحدة .

المادة الثانية

يعمل الطرفان المتعاقدان على دعم علاقاتهما الاخوية ويؤكدان عدم انضمام كل منهما الى حلف أو معاهدة ضد مصلحة الطرف الآخر .

المادة الثالثة

اتفق الطرفان المتعاقدان على تشجيع وتنمية التعاون بينهما فى الميادين

الاقتصادية والتجارية والمالية والفنية والثقافية والاجتماعية والتربوية والعلمية وفى أى ميدان آخر يهدف الى تدعيم علاقات الصداقة والتعاون بين بلديهما .

ويقوم الطرفان بعقد اتفاقيات تنظم أوجه التعاون بينهما فى الميادين المختلفة .

المادة الرابعة

اتفق الطرفان المتعاقدان على تكوين لجنة مشتركة مهمتها الاشراف على تنفيذ ما تتضمنه هذه الاتفاقية وتجتمع هذه اللجنة على الاقل مرة كل سنة بالتناوب فى ليبيا وتشاد .

المادة الخامسة

اتفق الطرفان المتعاقدان على التعاون وتنسيق مواقفهما ونشاطاتهما فى مجال العلاقات الدولية ، بما يتفق مع مبادىء واهداف منظمة الوحدة الافريقية ومنظمة الامم المتحدة .

المادة السادسة

يتعهد الطرفان المتعاقدان على بذل كل ما فى وسعهما لتحاشى الخلافات التى يمكن أن تحدث بين البلدين وذلك بالاتصالات المباشرة والمشاورات المتبادلة بينهما . ويعملان على حل ما قد ينشأ من مشاكل بينهما بالطرق السلمية وبما يتفق مع روح ميثاق منظمة الوحدة الافريقية ومنظمة الامم المتحدة .

المادة السابعة

تصبح هذه الاتفاقية نافذة المفعول اعتباراً من تاريخ تبادل وثائق التصديق عليها طبقاً للاجراءات الدستورية المعمول بها فى كلا البلدين على أن يتم تبادل وثائق التصديق خلال شهرين من تاريخ توقيعها .

المادة الثامنة

تسرى هذه الاتفاقية لمدة غير محددة ويمكن انهاء العمل بها من قبل أحد

الطرفين باخطار كتابى يقدم الى الطرف الآخر . قبل ستة أشهر من الانهاء .

حررت فى مدينة طرابلس بتاريخ ١٨ ذو القعدة ١٣٩٢هـ الموافق ٢٣ ديسمبر ١٩٧٢م من نسختين أصليتين باللغتين العربية والفرنسية وكلا النصين متساويين فى القوة القانونية .

العقيد / معمر القذافى	الرئيس / فرانسوا تمبلباى
عن حكومة الجمهورية العربية الليبية	عن حكومة جمهورية تشاد

Annex 35

AGREEMENT BETWEEN THE LIBYAN ARAB REPUBLIC AND THE REPUBLIC OF CHAD, TRIPOLI, 12 AUGUST 1974

Libyan People's Bureau for Foreign Liaison. Translation. Arabic text.

TRANSLATION

Agreement between the Libyan Arab Republic and the Republic of Chad

The Government of the Libyan Arab Republic and
The Government of the Republic of Chad,

Desiring to strengthen the bonds of friendship and neighbourliness between them, and in confirmation of the amicable and historical relations that bind their peoples,

Have come to agreement on the following:-

Article 1

The two sides emphasise their intention to maintain full cooperation in the light of the historical connections between their fraternal people, and to frustrate all attempts to hinder this mutual cooperation and closeness.

Article 2

The frontiers between the two countries is a colonial conception in which the two peoples and nations had no hand, and this matter should not obstruct their cooperation and fraternal relations.

Article 3

It is agreed that there shall be coordination between the local authorities in both countries to provide the necessary services to the inhabitants of the border areas and to maintain their security. This may be achieved by exchange visits between the Governor of Sabha and the Governor of the Northern Region in Chad, who are to draw up an appropriate programme.

Article 4

A joint Libyan Arab-Chadian committee is to be formed whose task shall be to draw up the bases for regulation of the movement of the inhabitants of the two countries and exchange of information. The two Governments shall agree on the level and membership of this committee, which shall hold its meetings regularly every six months alternately in Tripoli and N'Djamena and whenever circumstances require.

Executed in Tripoli on Monday 25 Rajab 1394AH (12 August 1974) in duplicate in Arabic and French, both versions having equal force.

(signed)	(signed)
for the Government of the Republic of Chad	for the Government of the Libyan Arab Republic
Minister of Foreign Affairs	Minister of Information and Culture
Herabe Douralta	Abuzaid Dourda

بسم الله الرحمن الرحيم

محضر اتفاق

بين

الجمهورية العربية الليبية وجمهورية تشاد

ان حكومتي الجمهورية العربية الليبية
وجمهورية تشاد

رغبة منهما في تعزيز أواصر الصداقة وترسيخ روابط الاخوة والجوار بينهما وتوثيقا للعلاقات الودية والتاريخية التي تربط شعبيهما فقد اتفقتا على مايلي :

مادة (١)

يؤكد الجانبان اصرارهما على مواصلة التعاون الشامل تدعيما للعلاقات التاريخية بين الشعبين الشقيقين عاملين على صد كل المحاولات التي من شأنها اعاقة هذا التعاون والالتقاء بينهما .

مادة (٢)

ان الحدود بين البلدين هي من تخطيط الاستعمار ولا دخل للشعبين والبلدين في ذلك ، وأن هذا الموضوع لا يجب أن يكون عائقا في طريق تعاونهما وعلاقاتهما الاخوية .

مادة (٣)

تم الاتفاق على التنسيق بين السلطات المحلية في كلا البلدين لتقديم الخدمات اللازمة لسكان مناطق الحدود والمحافظة على أمنهم ويمكن تحقيق ذلك بتبادل الزيارات بين محافظ سبها ومحافظ الشمال في تشاد اللذين عليهما وضع برنامج لذلك .

مادة (٤)

تشكل لجنة مشتركة عربية ليبية تشادية تكون مهمتها وضع الاسس التي تنظم انتقال مواطني البلدين وتبادل المعلومات على ان يتم الاتفاق بين الطرفين على مستوى اللجنة وعدد اعضائها وتعقد اجتماعاتها بشكل دوري كل ستة اشهر مرة في طرابلس ومرة في انجامينا وكلما دعت الضرورة لذلك .

حرر هذا المحضر في طرابلس يوم الاثنين ٢٥ رجب ١٣٩٤هـ الموافـــــق ١٢ أغسطس ١٩٧٤م من نسختين اصليتين احداهما باللغة العربية والثانية باللغة الفرنســـــية ولهما نفس القوة .

عن
حكومة جمهورية تشـــاد
وزير الخارجية
براهيم دربالتشـــا

عن
حكومة الجمهورية العربية الليبية
وزير الاعلام والثقافة
ابوزيـــد دوردة

Annex 36

THE LAGOS ACCORD ON NATIONAL RECONCILIATION IN CHAD, DATED 18 AUGUST 1979

United Nations, Security Council, Annex to the letter
dated 18 February 1981 from the Chargé d'affaires *a.i.*
of the Permanent Mission of Sierra Leone to the United Nations,
addressed to the President of the Security Council, S/14378.

S

UNITED NATIONS

SECURITY
COUNCIL

Distr.
GENERAL

S/14378
19 February 1981

ORIGINAL: ENGLISH

LETTER DATED 18 FEBRUARY 1981 FROM THE CHARGE D'AFFAIRES, A.I. OF THE PERMANENT MISSION OF SIERRA LEONE TO THE UNITED NATIONS, ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour, on instructions from my Government, to bring to your high attention the situation in Chad. In this connexion, please find attached herewith as annexes to this letter:

1. The Lagos Accord on National Reconciliation in Chad, dated 18 August 1979;
2. Resolution on Chad, adopted by the Assembly of Heads of States and Government of the Organization of African Unity at its Seventeenth Ordinary Session in Freetown, Sierra Leone, from 1 to 4 July 1980;
3. The Final Communiqué issued at Lomé on 14 January 1981, of the Bureau of the Seventeenth Summit of the Organization of African Unity and the OAU Standing Committee on Chad.

I shall be grateful if the above documents could be circulated as documents of the Security Council as a matter of urgency.

(Signed) Abdul G. KOROMA
Ambassador
Chargé d'Affaires, a.i.

[TRUE COPY]

Annex I

The Lagos Accord on National Reconciliation in Chad, dated 18 August 1979

We, the undersigned, Leaders of the various Chadian Parties, meeting in Lagos, Nigeria, from 13th *to* 18th *August, 1979, in consultation with the Official Representatives of the following countries:-*

Cameroun, Libya, Niger, Nigeria, Senegal, Sudan, Congo, Liberia, Benin, Central African Empire and the representative of the Secretary-General of the Organization of African Unity (hereafter called participating countries and observers)

CONSIDERING **the tragic events which have bedevilled the National Unity and Sovereignty of Chad for the past thirteen years,**

DESIROUS **to preserve the National Unity and territorial integrity of Chad,** *HAVE solemnly agreed as follows:-*

CEASE-FIRE

(a) To Proclaim immediately and maintain a cease-fire throughout the national territory; and we undertake to respect it strictly. The neighbouring countries undertake on their honour not to interfere in the internal affairs of Chad and to respect its territorial integrity.

(b) To ensure that the National Radio is used effectively to inform the entire Chadian people about the cease-fire.

(c) (i) To demilitarize N'Djamena; to that end all the Armed Forces shall withdraw to a distance of not less than 100 Kms. from N'Djamena. Proceed to recuperate deposits of clandestine arms. All

arms and gunpowder deposits shall be under the control of the neutral forces.

(ii) The Neutral troops shall protect all important Chadian personalities as well as the civilian population of N'Djamena and the following towns:-

ABECHE, FAYA, MOUNDOU, SAHR.

(iii) The specialized services of the Armed Forces such as the air force and the maintenance personnel of the air force shall be under the control of the neutral force until the Transitional National Union Government is formed. The responsibility of ensuring the use and control of the other public services shall be the sovereign preserve of only the Transitional National Union Government.

(d) To establish an effective neutral force composed of the troops of one or more countries not having common borders with Chad. To ensure free movement of the civilian population throughout the territory of Chad. The mission of the neutral forces shall end as soon as an integrated armed force is set up.

2. (a) To set up an independent Monitoring Commission headed by the Secretary-General of O.A.U. or his representative and under the moral authority of the Chairman of the Transitional National Union Government and composed of two (2) representatives of each of the following participating and *observer countries:- Benin, Cameroun, Central African Empire, Congo, Liberia, Libya, Niger, Nigeria, Senegal and Sudan. One (1) representative of each of the Chadian Parties signatories to the present Accord. The headquarters of the Commission shall be N'Djamena.*

(b) To cooperate fully with the Members of the Monitoring Commission to facilitate their free movement through the Chadian territory in the accomplishment of their mission.

(c) The mandate of the Commission shall be to:

(i) Ensure the application of the conditions of the cease-fire, as stipulated in the present Accord.

(ii) Ensure the effective maintenance of the cease-fire.

(iii) Ensure that all the provisions of the present Accord relating to the action programme are applied.

(iv) Ensure the neutrality of the National Radio during the period from the coming into force of the cease-fire to the formation of the Transitional National Union Government.

3. Ensure that none of the Parties signatories of the present Accord uses a secret radio station and that the National Radio is effectively used to promote Peace, Unity and National Reconciliation.

GENERAL AMNESTY

4. (a) To release all political prisoners of war and political detainees not later than 15 days from the date of the formation of the Transitional National Union Government.

(b) The Transitional National Union Government shall proclaim immediately amnesty for all political exiles to enable them to return to their home country.

FORMATION OF THE TRANSITIONAL NATIONAL UNION GOVERNMENT

5. (a) Form a Transitional National Union Government composed of all the factions signatory to the present Accord. The Transitional National Union Government shall last for 18 months.

(b) The Transitional National Union Government shall be the sole authority of the State. It shall be responsible for the administration of Chad for the period it shall exist.

(c) The Transitional National Union Government shall be responsible for the application of an agreed political programme enabling the formation of a freely-elected Government.

(d) Carry out a general reshuffle of posts of responsibility.

INTEGRATED ARMED FORCES

6. Dissolve all the existing Armed Forces and set up an integrated National Armed Force.

PRESENCE OF FRENCH TROOPS

7. The Chadian Parties unanimously recognised that the continued presence of French Troops in Chad is an impediment to finding a peaceful reconciliation and solution to the Chadian problems. The Chadians therefore agreed that the Transitional National Union Government when formed shall effect the withdrawal of the French Troops.

ENTRY INTO FORCE OF THE ACCORD

8. The present Accord shall come into force as soon as it is signed.

9. A copy of the present Accord shall be deposited with the General Secretariat of the Organization of African Unity.

SIGNATORIES

FROLINAT	*OFFICIAL/LEADER*
1st Volcan Army	- - - - - - - - - - - - - - - - - - *Abdoulaye Adam Dana*
National Democratic Union	- - - - - - - - - - - - - - - - - - *Dr. Fatcho Balam*
Frolinat *1st Peoples Army*	- - - - - - - - - - - - - - - - - - *Mahamat Abba Said*
First People's Army, Revolutionary Democratic Council	- - - - - - - - - - - - - - - - - - *Acyl Ahmed*
Frolinat *Original*	- - - - - - - - - - - - - - - - - - *Abba Siddik*
Frolinat *West Armed Forces (FAO)*	- - - - - - - - - - - - - - - - - - *Moussa Medela*
Frolinat *Main*	- - - - - - - - - - - - - - - - - - *Hadjero Senoussi*
Popular Movement of the Liberation of Chad (MPLT)	- - - - - - - - - - - - - - - - - - *Aboubakar Abdel Rahmane*

Popular Armed Forces (FAP)	Goukouni Weddei
Armed Forces of the North (FAN)	Hissene Habre
Armed Forces of Chad	Kamouge Wadal Abdel Kader

PARTICIPATING COUNTRIES

Libya	Dr. Ali A. Treki
Niger	Moumouni A. Djermakoya
Nigeria	M ajor-Gen. H.E.O. Adefope
Cameroun	Sadou Daodou
Sudan	Izzeldin Hamid
Central African Empire	Jean-Paul Mokodopo

OBSERVER COUNTRIES

Congo	Nze Pierre
Benin	Leopold Ahoueya
Senegal	Moustapha Niasse
Liberia	C. Cecil Dennis, Jr.
Organisation of African Unity	Dr. Peter U. Onu

WITNESS

Chairman	Major-General Shehu M. Yar'Adua Chief of Staff, Supreme Headquarters

Annex 37

TREATY OF FRIENDSHIP AND ALLIANCE BETWEEN THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA AND THE REPUBLIC OF CHAD, 15 JUNE 1980

Libyan People's Bureau for Foreign Liaison. Translation. Arabic text.

TRANSLATION

Treaty of Friendship and Alliance
between
the Socialist People's Libyan Arab Jamahiriya
and the Republic of Chad

The Socialist People's Libyan Arab Jamahiriya
and the Republic of Chad,

Conscious of the spiritual, cultural, economic and human bonds dictated by geographical circumstances and history which link the two peoples, and

Satisfied that these strong links have become embodied in an unflinching unity of future and purpose,

Have come to agreement on the following:-

Article 1

The two Parties undertake to defend each other in the event that one or either of them is subjected to any direct or indirect external aggression, whereby any aggression against one of them shall be regarded as aggression against the other requiring it to take appropriate action to repel such aggression.

Article 2

The two Parties undertake to exchange information in the military field and the sphere of internal and external security, and to provide assistance should one or both of them be subjected to any direct or indirect danger.

Article 3

Within the framework of the alliance between the great Revolution of 1 September and the Chad Revolution, the two Parties aim to:-

a. Strengthen cooperation between the two countries in the economic, cultural, political and military fields towards achievement of the aspirations of their peoples.

b. Fight colonialism in all its forms in the continent of Africa.

c. Resist any foreign assault on the African continent.

d. Resist exploitation and oppression of the peoples, support the struggle of the African masses for liberation from all forms of hegemony, and support the right of the peoples to self-determination.

Article 4

The two Contracting Parties undertake not to join any alliances, pacts or treaties with any State or States which conflict with the provisions of this Agreement.

Article 5

The two Parties shall aim for unhindered and unimpeded freedom of movement of individuals between the two countries.

Article 6

The Socialist People's Libyan Arab Jamahiriya shall make its economic, material and cultural potential available for the economic and military rehabilitation of the Republic of Chad, and shall provide Chad nationals with educational and cultural opportunities.

Article 7

The Republic of Chad undertakes not to permit the presence of any foreign base or imperialist colonialist forces on its territory, and reserves the right to call upon the Socialist People's Libyan Arab Jamahiriya if its independence, territorial integrity or internal security is threatened in accordance with the provisions of Article 1.

Article 8

This Agreement shall enter into force from the date of signature.

A joint Libyan-Chadian higher committee shall be formed to implement this Agreement, and the reports of this committee shall form an inseparable part of the Agreement.

Executed in Tripoli on 2 Shaaban 1389AH (15/6/1980) in duplicate in Arabic and French, both versions having equal legal force.

(signed)

Dr. Ali Abdussalaam Al-Turaiki

for the Socialist People's
Libyan Arab Jamahiriya

(signed)

Ibrahim Yussuf

for the Republic of Chad

معاهدة صداقة وتحالف بين الجماهيرية العربية الليبية الشعبية الاشتراكية وجمهورية تشـــــاد

ان الجماهيرية العربية الليبية الشعبية الاشتراكية
وجمهوريـــــة تشـــــــاد ،

ايمانا بما املته الظروف الجغرافية وكون من التاريخ المشترك من روابط روحية وثقافية واقتصادية وبشرية وحضارية عريقة بين الشعبين الشقيقين.

واقتناعا منهما بأن هذه الروابط القوية قد تجسدت في وحدة المصير ووحدة الهدف والطموحات دونما اعتبار لاى حواجز.

اتفقا على مايلي :ـــ

مادة (١)

يتعهد الطرفان بالدفاع كل منهما عن الاخر في حالة تعرض احدهما او كليهما لاى عدوان خارجي مباشر او غير مباشر ويعتبران اى عدوان على احدهما عدوان على الطرف الاخر ، الذى يتوجب عليه اتخاذ الاجراءات المناسبة لردع هذا العدوان.

مادة (٢)

يتعهد الطرفان بتبادل المعلومات في المجال العسكري ومجال الامن الداخلي والخارجي وتقديم المساعدة عند تعرض امن احدهما او كليهما لاى خطر مباشر او غير مباشر.

مادة (٣)

يعمل الطرفان في اطار التحالف بين ثورة الفاتح من سبتمبر العظيمة والثـــورة التشادية بقيادة فرولينا على مايلي :ـــ

أ) دعم التعاون بين البلدين في المجالات الاقتصادية والثقافية والسياسية والعسكرية وصولا لتحقيق طموحات الشعبين الشقيقين.

ب) محاربة الاستعمار بجميع اشكاله داخل القارة الافريقية.

ج) التصدى لاى غزو اجنبي للقارة الافريقية.

د) التصدى للاستغلال والاضطهاد المفروضين على الشعوب وتدعيم نضال الجماهير الافريقية لاجل التحرر من شتى انواع الهيمنة ودعم حق الشعوب في تقرير مصيرها.

مادة (٤)

يتعهد الطرفان المتعاقدان بعدم الارتباط بأية احلاف او معاهدات او اتفاقيـات مع دولة او دول تتعارض مع احكام هذه الاتفاقية.

مادة (٥)

يعمل الطرفان على حرية تنقل الاشخاص بين البلدين دون اية عوائق او قيود •

مادة (٦)

تساهم الجماهيرية العربية الليبية الشعبية الاشتراكية بامكانياتها الاقتصادية والمادية والثقافية في اعادة بناء جمهورية تشاد اقتصاديا وعسكريا ، كما تتيح فرص التعليم والثقافة للتشاديين •

مادة (٧)

تتعهد جمهورية تشاد بعدم السماح بتواجد اى قاعدة اجنبية او قوات استعمارية امبريالية على اراضيها وتحتفظ بحقها في الاستنجاد بالجماهيرية العربية الليبية الشعبية الاشتراكية اذا تعرض استقلالها او وحدة اراضيها او امنها الداخلي للخطر وفقا لاحكام المادة (١) •

مادة (٨)

تصبح هذه الاتفاقية سارية المفعول من تاريخ التوقيع عليها وتشكل لجنة عليا ليبية تشادية مشتركة لتنفيذ هذه الاتفاقية وتعتبر المحاضر الصادرة عنها جزء لا يتجزأ من الاتفاقية •

حررت في طرابلس بتاريخ ٢ شعبان ٩٨ من وفاة الرسول الموافق ١٩٨٠/٦/١٥م من نسختين احدهما بالعربية والاخرى بالفرنسية وكلا النصين متساويين في القوة القانونية •

ابراهيم يوسف	الدكتور علي عبدالسلام التريكي
عن جمهورية تشاد	عن الجماهيرية العربية الليبية الشعبية الاشتراكية

Annex 38

ACCORD BETWEEN LIBYA AND CHAD, 6 JANUARY 1981

Afrique contemporaine, 1981, p. 11.

Dans le cadre de l'alliance stratégique établie entre la Jamahiriya arabe libyenne populaire socialiste et le Tchad, des entretiens importants ont eu lieu entre les deux pays, aux termes desquels il a été convenu ce qui suit :

1) D'œuvrer en vue de réaliser l'unité complète entre les deux pays, une unité de masses où le pouvoir, les richesses et les armes seront entre les mains du peuple, et ses instruments les congrès et les comités populaires.

2) De renforcer l'alliance stratégique et de destin entre les deux pays, de considérer toute agression contre l'un d'eux comme une agression contre l'autre, d'être disposés, chacun des deux pays, à lutter aux côtés de l'autre en cas d'agression contre l'un d'eux.

3) Les deux parties décident de poursuivre leur aide aux peuples en lutte pour leur liberté et d'intensifier leur lutte contre le colonialisme, le sionisme et la réaction en Afrique, dans la partie arabe et partout ailleurs dans le monde.

4) La Jamahiriya arabe libyenne populaire socialiste affirme qu'elle poursuivra inconditionnellement son aide à la République sœur du Tchad, de manière à assurer la liberté et l'indépendance de son peuple et à détruire les bandes réactionnaires, fantoches et collaborateurs avec le colonialisme, à l'intérieur et à l'extérieur.

5) Partant du traité commun de défense conclu entre les deux pays le 2 Chaaban 1389, correspondant au 15 juin 1980, et sur demande officielle du gouvernement tchadien, la Jamahiriya arabe libyenne populaire socialiste enverra des militaires pour aider à maintenir la sécurité, à consolider la paix retrouvée à l'issue de la guerre civile et à reconstruire l'armée nationale et les forces de sécurité tchadiennes.

6) Les deux parties condamnent vigoureusement les tentatives impérialo-sionisto-réactionnaires, appuyées par le colonialisme dans la région, notamment par les régimes collaborateurs du Soudan et de l'Egypte, tentatives qui visent à porter atteinte aux victoires remportées par le peuple tchadien et à réallumer le feu de la discorde et de la guerre au Tchad.

Les activités auxquelles se livrent les régimes égyptien et soudanais et la déclaration du président soudanais selon laquelle la guerre ne fait que commencer au Tchad, constituent un début d'agression contre le peuple tchadien et des mesures concrètes amorçant cette agression contre le Tchad. Les agissements de ces deux régimes constituent une violation de la Charte de l'OUA et des accords de Lagos : à ce propos, les deux parties mettent en garde le régime soudanais contre les conséquences de toute agression déclenchée contre le Tchad à partir du territoire soudanais : le régime soudanais devra en assumer toutes les conséquences et le peuple tchadien ne restera pas les bras croisés devant tout ce qui constitue une menace pour sa sécurité et son intégrité.

7) La Jamahiriya affirme qu'elle poursuivra et accroitra son aide économique à la République sœur du Tchad, pour permettre à celle-ci de se reconstruire et pour assurer au peuple tchadien frère progrès et prospérité.

8) Les deux parties font part de leur satisfaction totale concernant la coopération entre la Jamahiriya arabe libyenne populaire socialiste et le Tchad, coopération qui a contribué efficacement à instaurer la paix et la sécurité dans la République sœur du Tchad.

9) Les deux parties font part de leur joie concernant les résultats positifs de la dernière conférence de Lagos consacrée à l'affaire tchadienne, soulignant leur engagement vis-à-vis des résolutions de cette conférence, lesquelles prouvent incontestablement l'aptitude des Africains à résoudre par eux-mêmes leurs problèmes, loin de toute intervention étrangère colonialiste. Les deux parties expriment à ce sujet leurs remerciements et leur considération pour les efforts louables déployés par la République fédérale du Nigeria et son président Haji Chehu Chagari, en vue d'instaurer la paix au Tchad. Elles expriment aussi leur considération pour l'actuel président de l'OUA, M. Siaka Stevens, président de la République du Sierra Leone.

10) La partie tchadienne éprouve une haute considération pour l'aide apportée par la Jamahiriya au peuple tchadien et grâce à laquelle celui-ci est parvenu à mettre fin à la rébellion et à instaurer la paix et la sécurité au Tchad.

11) Les deux parties décident d'ouvrir les frontières entre la Jamahiriya arabe libyenne populaire socialiste et la République du Tchad, et ce pour permettre aux citoyens libyens et tchadiens de circuler en toute liberté et sans conditions, et pour réaliser la fusion entre les deux peuples frères.

12) Les deux parties soulignent la nécessité de renforcer le gouvernement légal au Tchad, considérant celui-ci comme le seul pouvoir légitime au Tchad et exhortant les pays africains et la communauté internationale à appuyer le gouvernement pour lui permettre de reconstruire le Tchad, à lui fournir de l'aide et à s'abstenir totalement à traiter avec toute instance extérieure au gouvernement.

13) Les deux parties s'engagent à préserver la sécurité et la stabilité dans la région et à respecter les choix politiques des pays de la région et la volonté de leurs gouvernements. Elles affirment leur attachement au principe de non-ingérence dans les affaires intérieures des autres pays.

Le gouvernement tchadien fait part de son désir de développer ses relations avec tous les pays et en particulier les pays avoisinant au Tchad, à condition que ces pays respectent la souveraineté et s'abstiennent d'intervenir dans ses affaires intérieures.

Publié le 30 Safar 1390 après la mort du Prophète, correspondant au 6 janvier 1981.

(Le texte ci-dessus est celui diffusé par le bulletin quotidien de l'agence libyenne de presse Jana en français.)

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